COURT OF APPEALS
DECISION
DATED AND FILED

April 24, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-0790-CR **Cir. Ct. No. 00-CF-26**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PETER T. KUPAZA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Sauk County: JAMES EVENSON, Judge. *Affirmed*.

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

¶1 LUNDSTEN, J. Peter Kupaza was convicted of first-degree intentional homicide, WIS. STAT. § 940.01(1) (1997-98),[1] and hiding a corpse with

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

intent to conceal a crime, WIS. STAT. § 940.11(2). The prosecutor presented evidence that Kupaza killed his cousin, Mwivano Mwambashi Kupaza, cut up her body, and disposed of the body parts in the Wisconsin River. Kupaza argues that the trial evidence was insufficient to sustain his convictions and that evidence relating to a trained dog, which allegedly detected large amounts of human blood residue in Kupaza's apartment, was improperly admitted. We conclude that the evidence was sufficient to support Kupaza's convictions and that any error in admitting evidence relating to the dog was harmless error. We affirm the convictions.

Background

¶2 Kupaza and the victim, Mwivano, were first cousins and natives of Tanzania. Kupaza and Mwivano lived in neighboring houses in Tanzania, and Kupaza regarded Mwivano as his "sister." Kupaza emigrated to Wisconsin in 1993 and married Shari Goss shortly thereafter. Mwivano followed Kupaza to Wisconsin in January 1997, and moved into an apartment in Madison where Kupaza lived with his wife. Kupaza and Goss separated in the summer of 1997, and Kupaza and Mwivano moved out of the apartment. For a time, Kupaza and Mwivano lived together in Madison, but since April 1, 1999, Kupaza had been living by himself in an apartment on Pleasant View Road in Madison.

¶3 On July 30 and 31, 1999, parts of Mwivano's body were found near the shore of the Wisconsin River. Her body had been defleshed and disarticulated, and her separate body parts had been placed inside a black duffel bag and several Woodman's plastic bags. Kupaza's ex-wife, Shari Goss, testified that the black duffel bag containing some of the body parts was a duffel bag she had given to Kupaza. Kupaza's ex-wife also testified that Kupaza regularly shopped at

Woodman's grocery store and saved empty Woodman's plastic bags. In addition, a number of empty Woodman's plastic bags were found in Kupaza's apartment.

¶4 Mwivano's body had been in the water approximately three days and it was not identified for approximately six months. Based on the body parts found, police were able to create a poster approximating the appearance of the victim. Copies of the poster were distributed. Kupaza's ex-wife saw one of the posters and informed the police that the poster resembled Mwivano. Acting on that tip, police investigators matched fingerprints from the body with prints lifted off documents handled by Mwivano and were able to establish her identity.

¶5 On January 31, 2000, police interviewed Kupaza at his Pleasant View Road apartment. Kupaza told them that Mwivano had returned to Tanzania on April 25, 1999, and that he knew this was true because he confirmed her arrival in a phone call with Mwivano's father in Tanzania. Kupaza stated that Mwivano took a Greyhound bus to Iowa to meet a man named Shadrack, and that Mwivano planned to travel to Tanzania with Shadrack. Kupaza said that he did not know Shadrack's last name or how to contact Shadrack. Kupaza told the investigators that Mwivano had been living with Korean friends in Madison and that these friends left with Mwivano "to return to their home country via Iowa." Kupaza said he gave Mwivano $1,500 for her travel expenses. Kupaza initially told the police that Mwivano had never been to the Pleasant View Road apartment, but later in the interview he admitted that Mwivano had been there many times. When shown the poster depicting Mwivano, the same picture that Kupaza's ex-wife reported as looking like Mwivano, Kupaza stated that he did not recognize the picture, and that it did not resemble Mwivano.

¶6 After questioning Kupaza, police arrested him and searched his Pleasant View Road apartment. In the bathroom, police discovered a quarter-inch bloodstain between the wall and the baseboard about two feet from the bathtub. In order to discover the blood, police had to remove the baseboard from the wall. It appeared that the blood "had run down between the crack[] between the baseboard and wall." DNA evidence from the bloodstain matched a DNA sample from Mwivano's body.

¶7 During their search, police found an envelope, postmarked June 24, 1999, and addressed to Kupaza, from the Madison Area Technical College job placement office. Mwivano's fingerprint was found on the envelope. In addition, police found jewelry, a watch, several purses and bags, a bible, and a hymnal. Kupaza's ex-wife testified that the items belonged to Mwivano.

¶8 Additional trial evidence will be discussed where appropriate in the sections below.

Discussion

Sufficiency of the Evidence

¶9 This court may not reverse a conviction "unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). If any possibility exists that the jury could have drawn the appropriate inferences from the trial evidence to find guilt, this court may not overturn the verdict. ***Id***. at 507. Furthermore, "[a] criminal conviction can be based in whole or in part upon

circumstantial evidence. Circumstantial evidence is often more probative than direct evidence, and it is clear that circumstantial evidence alone may be sufficient to convict." ***State v. Pankow***, 144 Wis. 2d 23, 30, 422 N.W.2d 913 (Ct. App. 1988) (citations omitted). When considering sufficiency of the evidence, courts must consider all evidence submitted, including erroneously admitted evidence. *See* ***Lockhart v. Nelson***, 488 U.S. 33, 40-42 (1988).

¶10 Kupaza first argues that the evidence was insufficient to show that he dismembered and disposed of Mwivano's body. He contends the jury could have found that a "drop" of Mwivano's blood was found in the bathroom of his apartment, that he lied to police and others about various matters, including Mwivano's whereabouts, and that he had been exposed to butchering animals as a youth in Africa. Kupaza asserts: "beyond that, virtually nothing was proved." Kupaza claims there was "no hint or suggestion" of motive and that, at best, the prosecution proved he was a liar, an opportunist, and lazy. However, the trial record demonstrates that a reasonable jury could easily have determined that Kupaza cut up Mwivano's body in his apartment and disposed of it in the Wisconsin River.

¶11 First, Kupaza entirely ignores the dog-sniff evidence. We may not ignore this evidence for purposes of sufficiency of the evidence analysis, even though Kupaza argues that this evidence was erroneously admitted. *See* ***Lockhart***, 488 U.S. at 40-42. Thus, we must take into consideration the fact that the jury heard testimony from a dog trainer who claimed her dog was able to identify human blood that could not be detected by other means. She told the jury that her specially trained dog searched Kupaza's Pleasant View Road apartment and detected that human blood had been in Kupaza's bathtub and on several other surfaces in his bathroom. In addition, the dog detected human blood on Kupaza's

kitchen knives, a cutting board, a mop, and several doorknobs. The places the dog detected human blood strongly supported the prosecution theory that Kupaza disarticulated Mwivano's body in his apartment.

¶12 Apart from the dog evidence, the police search revealed a quarter-inch sample of Mwivano's blood between the bathroom wall and the baseboard, about two feet from the bathtub. It appeared that the blood "had run down between the crack[] between the baseboard and wall." The jury could have inferred from this evidence that a sufficient amount of Mwivano's blood had splattered on the wall so that a portion of it dripped down behind the baseboard.

¶13 In addition, the body parts discovered near the shore of the Wisconsin River were in several Woodman's plastic bags and a black duffel bag. Several Woodman's plastic bags were found in Kupaza's apartment, and Kupaza's ex-wife testified that the black duffel bag was the one she had given to Kupaza.

¶14 As will be shown below, there was much more evidence relating to this topic, but the evidence recited above is more than enough to reject Kupaza's claim that the evidence was insufficient to support his conviction of the crime of hiding a corpse with intent to conceal a crime.

¶15 Kupaza next argues that even if the evidence is sufficient to show that he cut up and disposed of Mwivano's body, it is insufficient to sustain his first-degree intentional homicide conviction because it does not prove he caused Mwivano's death or that he intended to kill her. Kupaza points out that the prosecution was unable to determine the cause of Mwivano's death and that there was no evidence of motive. Kupaza suggests that Mwivano could have been

killed accidentally or by some cause unrelated to him.[2] However, the prosecution presented sufficient evidence from which the jury could have found that Kupaza caused Mwivano's death and that he intended to cause her death.

¶16 We begin by noting that juries must often determine intent to kill from circumstantial evidence:

> "Seldom is an intent to kill ascertainable from the lips of the intender. Never can it be established by a retroactive mind-reading effort to determine what the actor was thinking when he planned and executed the act. That would require a crystal ball that recreated the past rather than sought to peer into the future."

State v. Ambrose, 181 Wis. 2d 234, 238, 510 N.W.2d 758 (Ct. App. 1993) (quoting ***State v. Wells***, 51 Wis. 2d 477, 483, 187 N.W.2d 328 (1971)). Similarly, "[i]ntent may be inferred from the defendant's conduct, including his words and gestures taken in the context of the circumstances." ***State v. Stewart***, 143 Wis. 2d 28, 35, 420 N.W.2d 44 (1988).

¶17 We also observe that the evidence supporting Kupaza's conviction for hiding Mwivano's corpse likewise provides support for the jury's finding that Kupaza caused Mwivano's death. *See* ***State v. Bettinger***, 100 Wis. 2d 691, 698, 303 N.W.2d 585 (1981) ("[E]vidence of criminal acts of an accused which are intended to obstruct justice or avoid punishment are admissible to prove a consciousness of guilt of the principal criminal charge.").[3] Not only did Kupaza

[2] Kupaza also suggests that Mwivano could have died of natural causes. This claim is refuted by the pathologist's undisputed testimony that Mwivano did not die of natural causes.

[3] Kupaza argues that ***Bettinger*** is inapplicable to this case because it is not a sufficiency of the evidence case. However, the quoted language appeared in the context of determining whether "evidence of the commission of one of the charges would be admissible to prove the commission of the second charge." ***State v. Bettinger***, 100 Wis. 2d 691, 697, 303 N.W.2d 585 (1981). It is this same principle on which we rely.

attempt to hide Mwivano's corpse by disposing of it in a river, he went through a great deal of trouble to impede identification of Mwivano's body. In gruesome fashion, Kupaza cut Mwivano's body into pieces and disposed of those pieces separately in the river. In fact, her feet were never found. Kupaza removed the skin from her skull, making identification extremely difficult. The jury could have inferred that the mutilation of Mwivano's body was also intended to obscure the cause of her death. Indeed, the pathologist was unable to determine the cause of death.

¶18 The prosecution presented evidence that Kupaza had a motive to kill Mwivano. Kupaza's ex-wife testified that Kupaza came to the United States with no money and that he rarely worked before Mwivano arrived in 1997. Testimony from Kupaza, Kupaza's ex-wife, and a co-worker of Kupaza indicated that from 1997 onward, Kupaza's employment history was marked by a series of part-time jobs. Mwivano was financially dependent on Kupaza. In 1998, after his divorce, Kupaza failed to make payments on his car lease. According to his ex-wife, Kupaza reported that he was unable to make the payments because of his expenses and lack of steady employment.

¶19 In addition, Kupaza testified that he last saw Mwivano in April 1999 at the "Memorial Union" in Madison preparing to board a bus and start the first leg of her planned return to Tanzania. In September of 1999, Kupaza told a friend that Mwivano went home because "[Kupaza] was having [a] hard time finding full-time employment, and [it was] kind of hard to keep up maintaining two people [at the] same time. So, [Kupaza] figured it would be much easier, cheaper, for him to be by himself for the time being."

¶20 Kupaza's strained financial situation presents a motive—that Kupaza intentionally killed Mwivano because she was a constant financial liability to him.

¶21 Moreover, if the jury believed Kupaza disposed of Mwivano's corpse, then the jury disbelieved Kupaza's trial testimony that he thought Mwivano left Madison in April 1999 and that he never saw her again. Kupaza's lie about when he last saw Mwivano is itself highly inculpatory. Mwivano was most likely killed in July 1999. Kupaza's lie that Mwivano left Madison for Tanzania in April, when he knew she had been in Madison in July, makes no sense, particularly under the view asserted by Kupaza that he had a good relationship with Mwivano. There was no apparent reason, under Kupaza's story, why Mwivano would return to Wisconsin, yet fail to contact Kupaza. Consequently, the jury could conclude that Kupaza did something to Mwivano to ensure that she was not seen until discovered in the Wisconsin River. Kupaza's lie presents evidence that Kupaza was plotting Mwivano's death for some months before her body was discovered.

¶22 In addition, Kupaza maintained a calendar and weekly planner. The calendar and planner had many entries in English but only three in non-English. Entries on July 26, 1999, in both the calendar and planner had words in languages spoken in Tanzania. The calendar had the word "bodo," which Kupaza's uncle translated as "falling down into something, or on to something, but it's falling," and the planner had the word "mushingwa," which the uncle translated as "a chosen day, or … special chosen day." The planner also contained an entry for July 30, 1999, the words "fanya kazi," which the uncle translated as "to do the job." These entries indicate that Kupaza was involved with something out of the ordinary during the week before Mwivano's body was discovered, something that involved "falling down into something" on a "special chosen day" and that

Kupaza wanted to keep this activity a secret from anyone who might look at his calendar or planner. The jury was entitled to infer from this evidence that Kupaza planned Mwivano's murder.

¶23 Taken together, the above evidence is sufficient to support both of Kupaza's convictions.

Harmless Error

¶24 Kupaza contends that evidence relating to the dog, which was allegedly able to detect human blood residue in Kupaza's apartment, was improperly admitted and denied Kupaza his constitutional right to confront witnesses against him. We need not resolve Kupaza's challenges to the dog-sniff evidence because we conclude that any error in admitting this evidence was harmless.[4]

Harmless Error Analysis

¶25 Kupaza asserts that the test for harmless error, in the context of erroneously admitted evidence, is whether the evidence had an "effect" on the verdicts. Kupaza points to phrases often repeated in harmless error jurisprudence: "contributed to the conviction" and "effect on the verdict." We must assume that

[4] Events post-trial casting doubt on the veracity of the dog handler's testimony and, therefore, the dog's blood-detecting abilities prompted Kupaza to ask this court to remand the case to the trial court for further postconviction proceedings. This court informed the parties that, prior to consideration of Kupaza's remand request, it intended to consider whether the dog-sniff evidence had an effect on the verdict within the meaning of harmless error law. We invited the parties to assume the evidence was erroneously admitted and discuss whether the "error" was harmless. Our order also invited Kupaza to explain why a harmless error conclusion by this court would not effectively dispose of all claims in connection with the dog-sniff evidence. Kupaza has not offered any such explanation. Because we conclude that any error in admitting the dog-sniff evidence was harmless error, we deny Kupaza's request for remand.

Kupaza is arguing that error in the admission of evidence may not be deemed harmless unless the reviewing court concludes the jury did not rely on the evidence in reaching its verdict. This is the only apparent interpretation of Kupaza's argument because he does not discuss the properly admitted evidence, but instead simply asserts it is obvious that the dog-sniff evidence was very significant evidence and that no rational view of the evidence supports the conclusion that the "dog evidence did not contribute to the conviction or have an effect on the verdict."[5]

¶26 We agree with Kupaza that the dog-sniff evidence appears to have been significant evidence and that the jury likely relied in part on it in reaching its verdict. We disagree with Kupaza's suggestion that this reliance compels

[5] Kupaza asserts that the State wrongly relies on a "sufficient evidence" theory to support its assertion of harmless error. We understand Kupaza to be saying that the State is asking this court to find harmless error because the untainted evidence is sufficient to support a guilty verdict. Kupaza's assertion finds support in the State's supplemental brief on harmless error, which contains this sentence: "When, as here, the claimed error involves admission of evidence against the defendant, the reviewing court must look to the totality of the appellate record to determine whether the trial evidence, absent the erroneously admitted evidence, supports the defendant's conviction." Later, the State argues:

> The jury, acting reasonably, could conclude from this objective evidence that Kupaza committed the homicide and disarticulation in his bathroom and used his duffel bag and the Woodman's bags to dispose of Mwivano's corpse. That Kupaza may consider this … evidence unpersuasive does not matter, for "[i]t is enough for this court to determine whether the evidence which the jury had a right to believe and accept as true was sufficient to convince it, acting reasonably, to the required degree of certitude." ***State v. Davidson***, 44 Wis. 2d 177, 200-01, 170 N.W.2d 755 (1969).

Davidson is a sufficiency-of-the-evidence case and the ***Davidson*** language quoted by the State has no application here. On the other hand, the State correctly relies on harmless error language from other decisions. Because the sufficiency-of-the-evidence standard is inapplicable to the issue before us, we decline to address the matter further.

rejection of the State's harmless error argument. The applicable harmless error test does not look to whether the jury relied on wrongly admitted evidence in reaching its verdict; rather, the test requires that we examine the untainted evidence to determine whether we are confident the jury would have reached the same verdict in the absence of the wrongly admitted evidence.

¶27 The often repeated test for harmless error is "whether there is a reasonable possibility that the error contributed to the conviction. A reasonable possibility is a possibility sufficient to undermine our confidence in the conviction." ***State v. Williams***, 2002 WI 58, ¶50, 253 Wis. 2d 99, 644 N.W.2d 919 (citations omitted). The test for harmless error was recently discussed and clarified in ***State v. Harvey***, 2002 WI 93, 254 Wis. 2d 442, 647 N.W.2d 189.

> "Although the Court [in ***Strickland v. Washington***, 466 U.S. 668 (1984)] uses the words, 'reasonable probability' of a different outcome, in contrast to our use of 'reasonable possibility,' it is clear from the ***Strickland*** opinion that the Supreme Court's test is substantively the same as ours. The Supreme Court uses the word 'probability,' in the sense of likelihood. It explains that for a different outcome to be 'reasonably probable' it need not be 'more likely than not'; a reasonable probability of a different outcome is one that raises a reasonable doubt about guilt, a 'probability sufficient to undermine confidence in the outcome' of the proceeding."

Id. at ¶41 (quoting ***State v. Dyess***, 124 Wis. 2d 525, 544-45, 370 N.W.2d 222 (1985)). The court in ***Harvey*** quoted ***Neder v. United States***, 527 U.S. 1 (1999), with approval:

> "We think, therefore, that the harmless-error inquiry must be essentially the same: Is it clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error? To set a barrier so high that it could never be surmounted would justify the very criticism that spawned the harmless-error doctrine in the first place: 'Reversal for error, regardless of its effect on the judgment,

> encourages litigants to abuse the judicial process and bestirs the public to ridicule it.'"

Harvey, 254 Wis. 2d 442, ¶46 (quoting ***Neder***, 527 U.S. at 18).

¶28 Thus, the test is *not* whether erroneously admitted evidence was considered and relied on by the jury in reaching its verdict. Rather, the reviewing court must assess the untainted evidence and determine whether it is confident that a reasonable jury would have reached the same verdict in the absence of error. In the words of ***Neder***: "Is it clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error?" ***Neder***, 527 U.S. at 18.

¶29 Furthermore, many Wisconsin cases demonstrate that an assertion of harmless error is not defeated simply by showing that the jury likely relied on the erroneously admitted evidence. Instead, reviewing courts "consider the error in the context of the entire trial and consider the strength of untainted evidence." ***State v. Thoms***, 228 Wis. 2d 868, 873, 599 N.W.2d 84 (Ct. App. 1999). Stated differently, courts "weigh the effect of the inadmissible evidence against the totality of the credible evidence supporting the verdict." ***State v. Britt***, 203 Wis. 2d 25, 41, 553 N.W.2d 528 (Ct. App. 1996). A less than exhaustive search of case law reveals the following examples of the application of this analysis, none of which contain any hint that the reviewing court concluded that the jury had not relied on the erroneously admitted evidence.

¶30 In ***Williams***, the supreme court concluded, in a drug possession case, that the erroneous admission of a lab report, offered to prove that the confiscated substance was cocaine, was harmless error because there was "ample other evidence" showing the substance was cocaine. ***Williams***, 253 Wis. 2d 99, ¶¶50-55.

¶31 In ***State v. Jackson***, 216 Wis. 2d 646, 668, 575 N.W.2d 475 (1998), the supreme court concluded that erroneously permitted cross-examination, which allowed the prosecutor to ask a witness about threats made by the defendant (including "Don't make me pull your eyeball out of your head" and "I'm going to cut off your God dam [sic] arm and beat you to death with it") was harmless error because of the "substantial amount of physical evidence corroborating the allegations of the complainant."

¶32 In ***State v. Alexander***, 214 Wis. 2d 628, 652, 571 N.W.2d 662 (1997), the supreme court concluded, in a drunk driving case, "that because of the overwhelming nature of the evidence as to the defendant's guilt, admitting any evidence regarding his prior convictions, suspensions or revocations, and submitting the status element to the jury was harmless error."

¶33 In ***State v. Patricia A.M.***, 176 Wis. 2d 542, 500 N.W.2d 289 (1993), the supreme court concluded that, in the joint trial of a husband and wife for multiple counts of child sexual assault, the erroneous admission of evidence indicating that the husband had engaged in anal intercourse with one of the two male victims was harmless error. The court explained: "Because there is overwhelming evidence, even absent the anal contact evidence, to support [the wife's] conviction, any error in admitting the anal contact evidence was harmless." ***Id.*** at 557.

¶34 This court uses the same analysis. In the following cases, we viewed the erroneously admitted evidence in the context of the entire trial and considered whether the untainted evidence was sufficiently strong that we could be confident the jury would have reached the same verdict in the absence of error. ***State v. Jones***, 2002 WI App 196, ¶¶48-51, 257 Wis. 2d 319, 651 N.W.2d 305; ***State v.***

Doerr, 229 Wis. 2d 616, 626-27, 599 N.W.2d 897 (Ct. App. 1999); ***State v. Petrovic***, 224 Wis. 2d 477, 494-95, 592 N.W.2d 238 (Ct. App. 1999); ***State v. Schirmang***, 210 Wis. 2d 324, 332-35, 565 N.W.2d 225 (Ct. App. 1997); ***State v. King***, 205 Wis. 2d 81, 92-95, 555 N.W.2d 189 (Ct. App. 1996).

¶35 It might be argued, based on quotes from case law taken out of context, that erroneously admitted evidence can be harmless only if it is somehow minor when compared with the remaining evidence. This is plainly not the law. In addition to some of the cases cited above, which involved significant erroneously admitted evidence, the decision in ***State v. Grant***, 139 Wis. 2d 45, 406 N.W.2d 744 (1987), demonstrates that even very damaging evidence, wrongly admitted, may be harmless error.

¶36 In ***Grant***, the defendant was charged with sexual assault and robbery arising out of allegations that he secretly entered a female victim's home at about 3:30 a.m. and robbed and sexually assaulted her. ***Id.*** at 47-48. The perpetrator had taken some steps to conceal his identity and the contested factual issue at trial was whether the woman had accurately identified the defendant as her assailant. During trial, the judge erroneously permitted the prosecutor to present other acts evidence showing that, six days after the charged offenses, the defendant was spotted by a different woman peering into her window, that she called the police, that police arrived in time to observe the defendant peering into the woman's home, and that the defendant had on his person the woman's name and address. ***Id.*** at 49. Although evidence showing that the defendant, just days after the charged offenses, was caught peering into another woman's home while carrying her name and address was undoubtedly strong evidence considered by the jury, the supreme court concluded admission was harmless because there was "substantial evidence, unrelated to the prowling evidence, which confirm[ed] the victim's

identification of the Defendant." ***Id.*** at 52. The court viewed the erroneously admitted evidence in the context of the entire trial and considered the "strength of the untainted evidence." ***Id.*** at 53-54.

¶37 Consequently, we apply well-settled harmless error jurisprudence to the trial record here. We must assess the untainted evidence and consider whether it is clear beyond a reasonable doubt that a rational jury would have found Kupaza guilty of both crimes absent the dog-sniff evidence.

The Dog-Sniff Evidence

¶38 If believed by the jury, the dog trainer's testimony provided significant evidence that a human body had bled profusely in Kupaza's bathroom and that someone, presumably Kupaza, had taken great pains to clean up the blood. The dog trainer testified that she could tell, based on the actions of her dog, that the dog detected human blood had been present in Kupaza's bathtub and on other surfaces in his bathroom, as well as on kitchen knives, a cutting board, a mop, and several doorknobs. With the exception of a quarter-inch spot of blood behind a baseboard in the bathroom, the state crime lab technicians did not find any blood residue on these surfaces. The dog trainer testified that the dog had the ability to identify blood that could not be detected by other means. The dog trainer conducted a demonstration intended to show that the dog could distinguish human blood from animal blood. During the in-court demonstration, the dog indicated that a cloth placed in a paper bag contained human blood and did not go near two similarly concealed samples of animal blood.

¶39 While Kupaza's attorney attacked the dog trainer's qualifications, credibility, and the demonstration from several angles, we will assume for purposes of this decision that the jury found the trainer credible. At the same time,

we note that the dog handler's testimony and demonstration consumed a relatively small portion of the trial. The transcribed testimony spans 1,369 pages. The dog trainer's direct and re-direct testimony comprised thirty-six pages and her full testimony comprised forty-six pages. The prosecutor's closing remarks spanned sixty-five pages, a total of five of which were spent recounting the dog-sniff evidence.

¶40 The value of the dog-sniff evidence is that it helped identify Kupaza's apartment as the location of the disarticulation which, in turn, supported the finding that Kupaza killed Mwivano. Accordingly, we assess the remaining evidence with this issue in mind.

Background Evidence

¶41 As set forth in greater detail above, Kupaza and the victim, Mwivano, were natives of Tanzania and close relatives who had moved to Wisconsin. Kupaza moved to Wisconsin first in 1993 and married Shari Goss. Mwivano followed Kupaza to Wisconsin in January 1997. After Kupaza and Goss separated in the summer of 1997, Kupaza and Mwivano lived together in Madison for a time. However, since April 1999, Kupaza had been living by himself in an apartment on Pleasant View Road in Madison.

¶42 On July 30 and 31, 1999, parts of Mwivano's body were found near the shore of the Wisconsin River. Acting on a tip from Kupaza's ex-wife, police investigators matched fingerprints from the body with prints lifted off documents handled by Mwivano and were able to establish her identity.

Police Interview with Kupaza

¶43 On January 31, 2000, police interviewed Kupaza at his Pleasant View Road apartment. Kupaza told the investigators that Mwivano had returned to Tanzania on April 25, 1999, and that he knew this was true because he confirmed her arrival in a phone call with Mwivano's father in Tanzania. Kupaza stated that Mwivano took a Greyhound bus to Iowa to meet a man named Shadrack, and that Mwivano planned to travel to Tanzania with Shadrack. Kupaza told the investigators that Mwivano had been living with Korean friends in Madison and that these friends left with Mwivano "to return to their home country via Iowa." Kupaza said he gave Mwivano $1,500 before she left and asserted he had saved the money in small increments and kept it in his home, not in his bank account. Kupaza initially told the police that Mwivano had never been to the Pleasant View Road apartment, but later in the interview he admitted that Mwivano had been there many times.[6]

Search of Kupaza's Apartment

¶44 After questioning Kupaza, police arrested him and searched his Pleasant View Road apartment. As detailed above, police discovered a quarter-inch sample of Mwivano's blood between the wall and the baseboard about two feet from the bathtub.[7] During their search, police found an envelope, postmarked June 24, 1999, and addressed to Kupaza, from the Madison Area Technical

[6] Kupaza also told the police that none of Mwivano's possessions were in his apartment.

[7] In addition, police found DNA evidence consistent with blood from Kupaza and tissue from Mwivano on the front edge of the toilet. The police did not find any other human bloodstains. We conclude that this evidence does not have any significant inculpatory or exculpatory value and, therefore, we do not consider it in our analysis.

College job placement office. Mwivano's fingerprint was found on the envelope. In addition, police found jewelry, a watch, several purses and bags, a bible, and a hymnal. Kupaza's ex-wife testified that the items belonged to Mwivano. The police also found a calendar and a weekly planner that belonged to Kupaza.

Kupaza's Trial Testimony

¶45 Kupaza testified at trial. He maintained that he had last seen Mwivano in April of 1999, but admitted he lied to the police when he said that Mwivano's father told him Mwivano had arrived in Tanzania.[8] Kupaza explained that he lied to the police because he suspected they were from immigration services and he knew that Mwivano's visa had expired. Kupaza said he wanted the police to think that Mwivano was not "here" so that the police would stop looking for her. Although Kupaza maintained that he thought Mwivano had returned to Tanzania, he said he was unsure if she actually left the Madison area.

¶46 Kupaza testified that on April 24, 1999, Mwivano packed her possessions at his apartment. Kupaza stated that Mwivano asked if she could use his black duffel bag. To explain why Mwivano did not take the black duffel bag with her on April 24, 1999, Kupaza testified that the duffel bag was full of his possessions and he did not have time to unpack the duffel bag because he had to return to work. Kupaza said he agreed to empty the duffel bag, pack it with Mwivano's things, and bring it to the "Memorial Union" the next day, where Mwivano planned to take a bus to Iowa. Kupaza said that he last saw Mwivano on April 25, 1999, when he met her at the "Memorial Union." Kupaza said he gave

[8] Mwivano's father traveled to the United States for the trial and testified that he had never had a telephone conversation with Kupaza while Kupaza lived in the United States.

Mwivano the black duffel bag and $1,500 for her plane ticket and left without seeing Mwivano get on the bus. Thus, Kupaza did not contest that parts of Mwivano's body were found in his duffel bag. Rather, Kupaza offered an innocent explanation for why Mwivano was found in his duffel bag.

¶47 Viewed in isolation, Kupaza's explanation that he lied to the police because of his fear Immigration and Naturalization Services was looking for Mwivano is plausible. However, we view that explanation in the context of the entire trial and conclude that the overwhelming evidence points to Kupaza's guilt.

State Crime Lab Blood Evidence

¶48 The bloodstain found behind the baseboard near the bathtub in Kupaza's bathroom is compelling evidence of guilt. The location of the bloodstain demonstrates that at one time there was a sufficient amount of Mwivano's blood on the wall of Kupaza's bathroom that it would run down between the wall and the baseboard. This evidence is both consistent with the grisly manner in which Mwivano's body was disarticulated and inconsistent with the explanation offered by Kupaza's attorney during closing arguments: that the bloodstain was the result of innocuous circumstances, such as Mwivano cutting her leg while shaving or from menstrual blood.

Shadrack Msengi Testimony

¶49 Kupaza maintained to investigators and during the trial that Mwivano planned to take a bus to Iowa, meet up with a man named Shadrack, and then travel to Tanzania. However, there was no independent support for this assertion and, at the same time, there was good reason to disbelieve the claim. Shadrack Msengi, a man from Tanzania who lives in Iowa, testified that he knew

both Mwivano and Kupaza from the time they spent in school together in Tanzania. He testified that he had no contact with Mwivano while she was in the United States. Msengi also testified that he could not think of a reason why someone would travel to Iowa before flying to Tanzania.

Faith Mmanywa's Testimony

¶50 Faith Mmanywa, a friend of Kupaza's, provided inculpatory testimony. Mmanywa moved to the United States from Tanzania in 1998. Mmanywa testified that in September 1999 (after Mwivano's body was discovered, but before it was identified), Kupaza telephoned Mmanywa and told her Mwivano had returned to Tanzania and was not going to return to the United States. According to Mmanywa, Kupaza's purpose in calling was to tell her that Mwivano returned to Tanzania and left him with a "big task," which was to marry some day, and a "big assignment," which was to convince Mmanywa to come to Wisconsin. Mmanywa testified that Kupaza told her that Mwivano had entered nursing school in Tanzania, and that he learned this information from "home."

¶51 This was highly damaging testimony because it further undercut Kupaza's explanation that he subsequently told police a similar lie to protect Mwivano from deportation. Kupaza gave no reason why he would lie to Mmanywa about Mwivano, and Kupaza suggested no reason why Mmanywa would lie about their telephone conversations. In fact, Kupaza was equivocal regarding what he told Mmanywa. Kupaza testified that he told Mmanywa that Mwivano was accepted to nursing school before she came to the United States, and that she "might" have gone back to Tanzania to attend nursing school. He never denied telling Mmanywa that he learned this from "home."

¶52 Accordingly, it was essentially uncontested that Kupaza told Mmanywa that Mwivano had returned to Tanzania and that he learned about Mwivano's activities from "home."

The Duffel Bag and Woodman's Shopping Bags Evidence

¶53 The prosecution presented evidence that Mwivano's body parts were found in *two* types of bags Kupaza kept in his apartment. A portion of Mwivano's remains was found in a large, black canvas duffel bag of the same type as the one owned by Kupaza. Kupaza's ex-wife identified the duffel bag as the one Kupaza had owned. Mwivano's other body parts were discovered inside plastic bags used by Woodman's grocery store. A number of identical plastic bags from Woodman's were discovered in Kupaza's apartment.

¶54 Kupaza's counsel attributed the Woodman's bags to coincidence. As to his black duffel bag, Kupaza's explanation was that he allowed Mwivano to use the bag for her return trip to Tanzania.

¶55 By any reasonable measure, the coincidence asserted by Kupaza is far-fetched. In the first place, Kupaza's explanation that he gave Mwivano his black duffel bag so that she could return to Tanzania is highly suspect for reasons set forth elsewhere in this opinion. When Mwivano's body parts were found not only in that black duffel bag, but also in the precise type of bag Kupaza collected and stored in his apartment, his innocent explanation grows more far-fetched.

The Fingerprint Evidence

¶56 Kupaza claimed he last saw Mwivano on April 25, 1999. Yet Mwivano's fingerprint was found in Kupaza's apartment under circumstances

showing the fingerprint had been made at the end of June, about one month before Mwivano's body was found in July of 1999.

¶57 During the search of Kupaza's apartment, police found an envelope postmarked June 24, 1999, addressed to Kupaza with a return address from the Madison Area Technical College job placement center. A state crime lab technician analyzed the fingerprint on this envelope and testified that it matched Mwivano's fingerprint. Mwivano's body parts were found on July 30 and 31, 1999. This was compelling evidence that Kupaza had seen Mwivano as recently as one month before her body was found, and that he was lying when he said his last contact with Mwivano was in April of 1999.

¶58 To counter the fingerprint evidence, Kupaza's attorney attempted to discredit the state crime lab technician who analyzed the fingerprint. Kupaza's attorney highlighted undisputed evidence that the technician mistakenly issued a report labeling two sets of documents used to identify Mwivano's body as coming from the same health clinic, when actually the documents came from two different clinics. Kupaza's attorney argued that the technician might have also "botched fingerprint analysis on the envelope [dated] June 24th."

¶59 However, the technician's labeling error was not much of an error. Indeed, the technician discovered his error and corrected it the same day he issued his initial report. More importantly, there was no suggestion that the technician lacked the expertise needed to match a fingerprint taken from Mwivano's body to the fingerprint on the envelope. And, Kupaza did not present any witness, expert or non-expert, with a different analysis of the fingerprint. Accordingly, no reasonable juror would have concluded that the technician's clerical error, an error

corrected soon after it was made, cast doubt on the accuracy of the fingerprint identification.

¶60 Kupaza's second line of attack on the fingerprint evidence was the suggestion that Mwivano made the print without Kupaza's knowledge. Kupaza's attorney presented evidence that Kupaza and Mwivano rented a downtown post office box together in June 1997. However, Kupaza did not testify that Mwivano was still receiving mail either regularly or occasionally at the post office box after April 1999, or, for that matter, even recently before April 1999. The only evidence in the record that Mwivano received mail at that box is the testimony of a post office employee who worked at the downtown post office until January 1999. The employee testified that on one unspecified occasion, before January 1999, Mwivano picked up mail at the post office. The employee testified that Mwivano did not use a key to access the post office box, but rather used her identification. From this testimony, Kupaza's attorney argued that Mwivano might have put her fingerprint on the envelope by going to the post office, using her passport to gain access to the post office box, looking at the envelope, and then returning it to Kupaza's box because it was not addressed to her.

¶61 To state this argument is to lay open its weakness. Under Kupaza's theory, Mwivano must have returned to Madison of her own free will because she engaged in the mundane activity of checking her mail. According to Kupaza, he had a good and loving relationship with Mwivano, such that he considered her his "sister." However, Kupaza does not explain why Mwivano would surreptitiously return to Madison and not contact him. The jury is left with two competing inferences: either Kupaza did not have a very good relationship with Mwivano, or Kupaza was lying about not having contact with her after April 25, 1999. Either interpretation supports Kupaza's guilty verdicts.

Kupaza's Finances and His Claim That He Gave Mwivano $1,500

¶62 There was no suggestion how Kupaza was able to save the large sum of $1,500 and good reason to doubt that he ever accumulated such a sum.

¶63 Kupaza's ex-wife testified that Kupaza came to the United States with no money and that he rarely worked before Mwivano arrived in 1997. Testimony from Kupaza, Kupaza's ex-wife, and a co-worker of Kupaza indicated that from 1997 onward, Kupaza's employment history is marked by a series of part-time jobs. Kupaza contended that he started saving money to send Mwivano back to Tanzania in January 1998. To explain why he had no record of the $1,500, Kupaza claimed that he saved the money in small increments stored in his home and not in the bank. However, in 1998, after his divorce, Kupaza failed to make payments on his car lease. According to Kupaza's ex-wife, Kupaza reported that he was unable to make the payments because of his expenses and lack of steady employment.

¶64 As a result of Kupaza's failure to make payments on his car as mandated by his divorce proceedings, Kupaza had to appear in court and file a financial disclosure form. The form, dated May 20, 1998, listed Kupaza's assets, but did not include any separate savings in cash.[9] Kupaza listed Mwivano as a dependent on that form.

[9] Kupaza explained that he chose not to include the savings on the form, although the form required him to disclose all of his monetary assets.

¶65 At trial, Kupaza testified that he chose to lie about his cash savings on the divorce disclosure form. But this does not explain how he was able to save money at a time when he could not make his car payments.

¶66 Kupaza told at least one other person about his financial problems. In September of 1999, Kupaza told a friend that Mwivano went home because "[Kupaza] was having [a] hard time finding full-time employment, and [it was] kind of hard to keep up maintaining two people [at the] same time. So, [Kupaza] figured it would be much easier, cheaper, for him to be by himself for the time being."

¶67 Kupaza's financial difficulties cast grave doubt on his claim that he saved enough money to send Mwivano home to Tanzania. To the contrary, the evidence provides a motive—that Kupaza killed Mwivano because she was a constant financial liability to him.

Additional Incriminating Evidence

¶68 The above evidence is enough to convince us beyond a reasonable doubt that a rational jury would have convicted Kupaza of both crimes absent the dog-sniff evidence. Nonetheless, we note that this was a lengthy trial and there was other less incriminating evidence worthy of mention. We will briefly summarize four more pieces of evidence which, when considered in conjunction with other evidence, further increases our confidence in the verdict.

¶69 First, Kupaza had credibility problems. In addition to his admitted lie to the police, his lie about Mwivano to Mmanywa, and the fact that he either lied at trial or on his divorce financial disclosure form about his assets, Kupaza also lied when filling out a job application form in June of 1999, two months after

Mwivano purportedly left Madison. At that time, Kupaza filled out an application form listing Mwivano as an emergency contact person and providing for her a non-existent address. As Kupaza himself states in the context of sufficiency of the evidence, the prosecution proved he was a "liar."

¶70 Second, Mwivano's body was discovered near the shore of the Wisconsin River and Kupaza was familiar with that river. One of Kupaza's co-workers testified that she discussed the Wisconsin River with Kupaza, and that Kupaza commented on the river's beauty, currents, and danger.

¶71 Third, a forensic expert testified that Mwivano's body was disarticulated in a skillful manner. Although there was no testimony that Kupaza had previous experience butchering animals, several witnesses who had lived in Tanzania, including two of Kupaza's uncles and Kupaza's ex-wife who met Kupaza in Tanzania, testified that butchering animals is relatively common in Tanzania.

¶72 Fourth, as detailed in the sufficiency of the evidence section, Kupaza maintained a calendar and weekly planner. The calendar and planner had three entries written in languages spoken in Tanzania. The calendar had the word "bodo," translated as "falling down into something, or on to something, but it's falling," and the planner had the word "mushingwa," translated as "a chosen day, or … special chosen day." The planner also contained an entry for July 30, 1999, the words "fanya kazi," translated as "to do the job." These entries suggest that Kupaza was involved with something out of the ordinary during the week before Mwivano's body was discovered, something that involved "falling down into something" on a "special chosen day," and that Kupaza wanted to keep this a secret from anyone who might look at his calendar or planner.

Summary

¶73 As set forth above, apart from the dog-sniff evidence, the prosecution presented overwhelming evidence of Kupaza's guilt in the form of physical evidence linking Kupaza to the crime, Kupaza's own conflicting stories, and evidence showing that Kupaza lied about Mwivano's disappearance. The dog-sniff evidence, even if erroneously admitted, does not "undermine our confidence in the conviction." ***Williams***, 253 Wis. 2d 99, ¶50.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.