COURT OF APPEALS
DECISION
DATED AND RELEASED

March 18, 1997

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.

NOTICE

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

No. 96-1039-CR

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

State of Wisconsin,

Plaintiff-Respondent,

v.

Luis Anthony Reynaldo,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed*.

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Luis Anthony Reynaldo appeals from a judgment of conviction for a second or subsequent offense of possession of a controlled substance (cocaine) with intent to deliver, and from the trial court order denying his motion for postconviction relief. He argues that the evidence was insufficient to support his conviction, that the trial court improperly refused to

strike testimony of an officer who participated in his arrest, and that his sentence is unduly harsh. We affirm.

According to the trial testimony, on March 22, 1994, while driving a red Subaru with a passenger, Reynaldo was stopped by an unmarked police vehicle. The police car parked nose-to-nose with the Subaru. Darryl Drake, a Greenfield police sergeant assigned to the DEA Drug Task Force, approached the passenger side of the Subaru. Special Agent William Hehr approached the driver's side where Reynaldo sat. Drake ordered the passenger to exit the car. Hehr ordered Reynaldo to exit the car. After the passenger exited, Drake found a small clear bag containing a white powdery substance on the ground near the passenger. Believing it contained cocaine, Drake picked up the bag and showed it to Hehr. At about the same time, Reynaldo exited the car and Hehr noticed Reynaldo's bulging pockets. Patting him down for weapons, Hehr recovered a beeper, a wallet, and $1,679 in cash from Reynaldo's pockets.

Special Agent Hehr returned to his car for handcuffs and to radio for backup. At that time, both Hehr and Sergeant Drake looked away from Reynaldo. Hehr testified that Reynaldo was out of his sight for less than thirty seconds. Drake testified that Reynaldo was out of his (Drake's) sight for three to five seconds. When Drake looked at Reynaldo again, he noticed that Reynaldo was close to the rear of the Subaru. Drake then ordered Reynaldo to return to his former position at the car's side. Hehr also noticed Reynaldo's change in position and also ordered Reynaldo back to the side of the Subaru.

Moments later, backup arrived. Task Force Agent John Siarkiewicz parked behind the Subaru and, as he exited his car, Siarkiewicz noticed two plastic bags near the rear of the Subaru—one "behind the left rear tire ... and the other ... approximately 6 inches further toward the middle of the vehicle, close to the bumper of the vehicle." Siarkiewicz picked up the bags; they contained 9.9 grams of cocaine.

Siarkiewicz then used a trained dog, Della, to sniff the Subaru and alert the officers to the presence of narcotics. Della alerted officers to odors of narcotics on the driver's console and arm rest, and on the money removed from Reynaldo's pocket. In addition, Della sniffed narcotics on a bag she pulled from under the front passenger seat. The bag contained $16,530 in cash.

Reynaldo first argues that the evidence was insufficient for a jury to convict him. Emphasizing the limitations of the State's evidence and the explanation offered by the defense evidence, he contends:

> In this case, no evidence was given to the jury that tied the Appellant to the drugs that were found at the scene. The only evidence that was presented to the jury was that the Appellant was seen towards the rear of the car. There was no fingerprint analysis performed on the bags of cocaine that were found at the rear of the ca[r].
>
> The Appellant produced the owner of the vehicle, Jesus Santiestavan. Mr. Santiestavan explained to the jury that he lent his vehicle to the Appellant to use. He also informed the jury that he had left the $16,[53]0, which was found under the front drivers seat, in the car because it was money that he had picked up from people for the sale of drugs.

In reviewing a challenge to the sufficiency of evidence to support a criminal conviction, we will not reverse unless the evidence, viewed most favorably to the conviction, is so lacking in probative value that, as a matter of law, 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, 755 (1990). We conclude that, based on the evidence, the jury reasonably could have found that Reynaldo possessed the cocaine with intent to deliver.

Evidence established that Reynaldo had concealed two bags of cocaine somewhere on his person and tossed them behind the Subaru when the officers were not looking. Sergeant Drake testified that Reynaldo was the only person at the location where Special Agent Siarkiewicz discovered the bags, and Siarkiewicz testified that no one else approached that location after he arrived at the scene. Although circumstantial, the evidence clearly points to Reynaldo's possession of the cocaine. Reynaldo does not dispute that, if the evidence proved his possession of cocaine, then the additional evidence of his possession of a beeper, $1,679 cash, and the cocaine was sufficient to prove intent to deliver.

Reynaldo next argues that the trial court erred in refusing to strike Sergeant Drake's testimony "regarding the dog-sniffing experiment" that involved Della detecting controlled substances on the cash recovered from Reynaldo's pocket. He contends that the State failed to comply with discovery because it provided no report about the experiment and, therefore, under § 971.23(7), STATS., the trial court should have stricken the testimony as "evidence not presented for inspection or copying." Reynaldo, however, failed to object to the testimony until two subsequent State witnesses had completed their testimony and the State had rested. Thus, he waived this issue. *See* ***State v. Edwardsen***, 146 Wis.2d 198, 211, 430 N.W.2d 604, 609 (Ct. App. 1988) (where "objection was not voiced until after all of the evidence was in[, f]ailure to make a timely objection to the admissibility of evidence waives the objection").

Finally, Reynaldo contends that his fourteen-year sentence is unduly harsh. He fails, however, to offer any argument in support of that contention except to say that "this case is somewhat different considering that the evidence against [him] was minimal." He never explains why he believes that his sentence is unduly harsh but merely refers us, instead, to his previous arguments challenging his conviction. Nothing in those arguments even hints at any undue harshness in sentencing. We see nothing to suggest that Reynaldo's sentence is so disproportionate to the crime as to shock public sentiment. ***State v. Killory***, 73 Wis.2d 400, 408, 243 N.W.2d 475, 481 (1976).

By the Court. – Judgment and order affirmed.

This opinion will not be published. *See* Rule 809.23(1)(b)5 Stats.