COURT OF APPEALS
DECISION
DATED AND RELEASED

August 21, 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. 97-0551-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DESHAWN REED,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: J. R. LONG, Judge. *Affirmed.*

DYKMAN, P.J.[1] Deshawn Reed appeals from a judgment convicting him of possession of THC within 1000 feet of a school, in violation of §§ 161.41(3r) and 161.495, STATS., 1993-94. He claims that there was

[1] This is a case decided by one judge pursuant to § 752.31(2)(f), STATS.

insufficient evidence to support a guilty verdict for possession. We disagree and affirm.

BACKGROUND

On December 15, 1995, Detective John Markley and other officers of the Beloit Police Department executed a search warrant at 1110 Randall Street in Beloit, where Deshawn Reed lived with Tawana Reed and Darrick Robison. During the search, Markley found a blunt (a cigar with marijuana inserted in place of the normal tobacco) in a plastic bag in the basement. Markley did not find any controlled substances on Deshawn Reed's person, who was in his bedroom at the time of the search.

Deshawn Reed was charged with possession of THC within 1000 feet of a school. At trial, Detective Tom Dunkin of the Beloit Police Department testified that Tawana Reed told him she sold marijuana from the residence and that Deshawn Reed would get the marijuana for her to sell. Tawana also told Dunkin that Deshawn Reed smoked marijuana in the house. Dunkin further testified that Deshawn told him that he had to sneak down to the basement to smoke marijuana because Tawana did not approve of marijuana smoking in the house. Deshawn told Dunkin that he smoked marijuana by putting it in cigars like the one found in the basement.

Tawana Reed, after having been given immunity, testified that she sold marijuana while she lived at that address. She also testified that she had no knowledge of Deshawn Reed smoking marijuana in the house and denied telling Detective Dunkin that that was the case. Deshawn Reed testified that he told Detective Dunkin he used marijuana in his own room, but not in the basement. Reed testified that the blunt in the basement was not his.

The jury found Reed guilty of possession of THC within 1000 feet of a school. Reed appeals.

STANDARD OF REVIEW

When an appellant claims that there was insufficient evidence to support the jury's verdict, we will not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force" that no reasonable jury "could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990). The jury's verdict will be upheld if any possibility exists that they could have drawn an inference of guilt from the evidence. *See **id.*** at 507, 451 N.W.2d at 758. If more than one reasonable inference can be drawn, we must adopt the inference that supports the conviction. ***State v. Hamilton***, 120 Wis.2d 532, 541, 356 N.W.2d 169, 174 (1984).

DISCUSSION

Reed argues that there was insufficient evidence to support the jury's verdict. First, he argues that the evidence did not prove that the marijuana was under his dominion and control. Reed did not need to have the marijuana on his person at the time of arrest in order to be convicted of possession. Possession may be imputed if the accused had knowledge of the presence of the drug and it is found in a place immediately accessible to and under the accused's exclusive or joint dominion and control. *See* ***Schmidt v. State***, 77 Wis.2d 370, 379, 253 N.W.2d 204, 208 (1977). This "constructive possession" is sufficient to convict for possession of controlled substances. *See* ***Ritacca v. Kenosha County Court***, 91 Wis.2d 72, 82, 280 N.W.2d 751, 756 (1979).

The blunt in the basement was accessible to Reed. It was not under his exclusive dominion and control, but did fall under his joint dominion and control, along with the co-occupants of the house. In addition, Reed testified that he smoked blunts in the house and Detective Dunkin testified that Reed admitted to smoking blunts in the basement, giving the jury a basis on which to believe that Reed had knowledge of the presence of marijuana in the basement. Although Reed testified that he did not smoke blunts in the basement, it is the jury's job to resolve conflicts in the testimony, weigh the evidence and draw reasonable inferences from the facts. *See* ***Poellinger***, 153 Wis.2d at 506, 451 N.W.2d at 757. The evidence was sufficient to support a finding of guilt by the jury.

Reed next argues that the evidence did not prove that he knew that he was in possession of marijuana. To convict an individual of possession of marijuana, the State must prove not only that the defendant was in possession of the drug, but also that the defendant knew or believed that he or she was. *See* ***Poellinger***, 153 Wis.2d at 508, 451 N.W.2d at 758. Reed argues that this case is analogous with ***Kabat v. State***, 76 Wis.2d 224, 251 N.W.2d 38 (1977), in which the court ruled that the evidence was insufficient to support a conviction for possession.

In ***Kabat***, the police seized a pipe from the defendant. ***Id.*** at 225, 251 N.W.2d at 39. A drug identification chemist scraped the residue from the inside of the pipe and concluded that it contained Delta-1 hydrocannabinol, a chemical ingredient of marijuana. ***Id.*** at 225-26, 251 N.W.2d at 39. The chemist was unable to express the weight of the residue that was scraped from the pipe except to say that it was less than one-half of a gram. ***Id.*** at 226, 251 N.W.2d at 39. The defendant testified that he had not used the pipe for a couple weeks and that he did not know that marijuana was in the pipe because he had cleaned it. ***Id.*** The supreme court concluded that "the amount and form of the substance found in the pipe [was] not sufficient to impute to Kabat knowledge that the substance contained ingredients of marijuana." ***Id.*** at 229, 251 N.W.2d at 41.

This case is distinguishable from ***Kabat***. First, the blunt found in the basement did not only contain the residue of burnt marijuana. Detective Markley

testified that he found what “appeared to be greener material” in the blunt, and Stephanie Ross of the crime laboratories bureau testified that she tested “plant material” that was found in the blunt. Second, Detective Dunkin testified that Reed admitting to smoking blunts in the basement, giving the jury a basis on which to conclude that Reed had knowledge of the marijuana in the basement. Reed did not need to possess a minimum quantity of marijuana to be convicted of possession. *See* ***Poellinger***, 153 Wis.2d at 508, 451 N.W.2d at 758. Based on the evidence, a reasonable jury could find that Reed had knowledge of possession. Therefore, we conclude that the evidence was sufficient to permit the jury to find Reed guilty of possession of THC.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.