

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 2, 2006

Cornelia G. Clark
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. 2003AP2912-CR

Cir. Ct. No. 2001CF5673

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEMITRIUS JACKSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Demetrius Jackson appeals from a judgment of conviction for distributing cocaine as a party to the crime. The issue is whether there was sufficient evidence to support the jury's verdict. We conclude that there was, and affirm.

¶2 The following facts were taken from the trial testimony of two members of the Milwaukee Police Department. The police received an anonymous (citizen) complaint of drug dealing involving a burgundy hatchback, further identified by location and license plate. Milwaukee Police Officer Michael Terrell, working undercover, was dispatched to that location; once there, he approached a man in the street (“third party”), telling him that he wanted to buy some crack cocaine. That man directed Terrell to a red car (which was the burgundy hatchback). Both went to the red car and the third party told Jackson that Terrell wanted to buy some crack. Jackson, who had been seated in the front passenger seat, exited the red car and negotiated Terrell’s purchase of .10 grams of crack cocaine for twenty dollars. According to Terrell, Jackson told him that he would not sell him the drugs directly because there were a lot of police in the area. Jackson reached into his pocket and put something in the third party’s right hand. That person gave Terrell two corner cuts of cocaine base, which were in his right hand; Terrell gave the third party two prerecorded ten-dollar bills. Terrell then watched the third party hand Jackson the money. Milwaukee Police Detective Scott Marlock was observing the incident through binoculars from about two blocks away. The police then arrested Jackson who had the two prerecorded ten-dollar bills, and was identified by Terrell.¹

¶3 Jackson testified that he was not selling drugs that day, although he was compelled to disclose his nine previous criminal convictions to the jury. He explained that the third party had asked him for a twenty-dollar bill, in exchange for two ten-dollar bills.

¹ The third party was never apprehended for this offense.

¶4 The jury found Jackson guilty of distributing no more than five grams of cocaine, as a subsequent drug offense and as a party to the crime, contrary to WIS. STAT. §§ 961.41(1)(cm)1., 961.48, and 939.05 (2001-02).² The police officers' testimony was sufficient to establish, beyond a reasonable doubt, that Jackson sold .10 grams of cocaine to Terrell for twenty dollars; the evidence was certainly sufficient to support the jury's finding of guilt as a party to the crime. *See* § 939.05.

¶5 Appellate review of a jury verdict is highly deferential to the jury and to the trial court.

“An appellant attacking a jury verdict has a heavy burden, for the rules governing our review strongly favor the verdict.” We affirm the verdict if “the evidence adduced, believed, and rationally considered by the jury was sufficient to prove the defendant's guilt beyond a reasonable doubt.” In reviewing the evidence, we view it in the light most favorable to the verdict, and, if more than one reasonable inference can be drawn from the evidence, we adopt the inference that supports the verdict. The credibility of the witnesses and the weight of the evidence is for the trier of fact, as is the resolution of inconsistencies within a witness's testimony.

State v. Hahn, 221 Wis. 2d 670, 683, 586 N.W.2d 5 (Ct. App. 1998) (citations omitted).

¶6 Jackson quarrels with the jury, who accepted the police officers' version of the incident, rather than his. It is the jury's prerogative, however, to choose which version of the facts to accept, as long as that version is not

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict.

State v. Poellinger, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990) (citation omitted).

¶7 Jackson misunderstands accomplice liability, which he does not escape by conducting the transaction through an unapprehended conduit. Liability as a party to the crime can be established “although the person did not directly commit [the crime] and although the person who directly committed [the crime] has not been convicted.” WIS. STAT. § 939.05(1). Terrell’s testimony directly links Jackson and the third party and is sufficient to establish Jackson’s guilt as a party to the crime. We reject Jackson’s challenges to the sufficiency of the evidence of his guilt.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

