

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 29, 2008

David R. Schanker
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. 2007AP2552-CR

Cir. Ct. No. 2006CF4159

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDISON CAMACHO,

DEFENDANT-APPELLANT.

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

Before Wedemeyer*, Fine and Kessler, JJ.

¶1 PER CURIAM. Edison Camacho appeals after a jury found him guilty of one count of being a felon in possession of a firearm. See WIS. STAT. § 941.29(2)(a) (2005–06). Camacho’s postconviction motion was denied by the circuit court. The only issue on appeal is whether sufficient evidence supports the

*This opinion was circulated and approved before Judge Wedemeyer's death.

jury's verdict. Because it was stipulated that Camacho had a felony conviction, and the Record contains ample evidence that Camacho possessed a firearm, we affirm the judgment of conviction and postconviction order.

FACTS

¶2 On May 15, 2006, Dennis Penelton walked past a house where three men were gathered on the front porch. Penelton was wearing his hat tilted to the right, and he testified that he “had a feeling” that the men on the porch were associated with a rival street gang. Penelton testified that as he passed the house, two of the men ran back into the house and a third man “came out of nowhere,” pulled a revolver from underneath his shirt, and fired the gun toward Penelton. The gunshot did not strike Penelton who ran from the scene and called police. After being shown a photo array, Penelton told police that he was “90% certain” that David Castro was the person who fired at him. Castro told police that he was on the porch with his cousin and Camacho, known to Castro as “Unknown Eddie.” As Penelton walked past the house, Camacho gave a .357 revolver to Castro and told him to shoot at Penelton.

¶3 Camacho was charged with first-degree recklessly endangering safety, as a party to a crime, and with being a felon in possession of a firearm. At a jury trial, Castro testified for the State, and he told the jury that Camacho gave him a gun and told him to shoot at Penelton. Castro testified that the gun was “an old gun, like a .357 magnum” and that it was “heavy” and a real gun. Castro acknowledged telling police during one interview that Camacho had been the shooter. Castro also acknowledged that he had agreed to testify truthfully against Camacho, and that the felony charges against him were reduced to a misdemeanor in exchange for his truthful testimony in Camacho's trial.

¶4 Several police officers testified for the State. Anthony Randazzo testified that several photographs were recovered from a cellular telephone found in a recovered stolen car.¹ One photograph showed Camacho holding what “appears to be a Ruger .357 type revolver.” Randazzo testified that he was familiar with that type of weapon because it had been a standard-issue firearm for the police department. Randazzo testified that he had dealt with facsimile weapons previously and that based on his experience, the gun shown in the photograph was not a facsimile. Another photograph showed Camacho, who was wearing a hat tilted to the left, with a gun tucked in his waistband. A third photograph showed Camacho holding a pistol in front of his chest.

¶5 Detective Doreen Anderson testified that she worked in the police department’s “high technology” unit and her duties included performing forensic examinations of computers and cellular telephones. Anderson testified that the time and date stamp displayed on a photograph found in a cellular telephone “[n]ormally ... indicate[s] when the photo was taken.” The date stamp for the first two photographs described above was May 15, 2006, and the date stamp for the third photograph was May 18, 2006. Anderson acknowledged that photographs can be sent between telephones. However, because Anderson found no “emails [on the telephone] related to the images,” she opined that the dates shown on the photographs reflected the dates on which the pictures were taken.

¶6 The jury found Camacho not guilty on the reckless endangerment charge and guilty on the felon in possession of a firearm charge.

¹ Police recovered the telephone on May 31, 2006.

¶7 In a postconviction motion, Camacho contended that the State had failed to prove that he possessed a firearm. Camacho asserted that Castro’s testimony was the only direct evidence that Camacho possessed a firearm, and the jury’s not guilty verdict on the reckless endangerment charge showed that the jury did not believe Castro’s testimony. Camacho further argued that the photographs did not prove that he possessed a firearm because the State did not prove that the gun shown in the photographs was a real gun. The circuit court denied Camacho’s motion. On appeal, Camacho renews the contentions made in his postconviction motion. For the reasons stated below, we reject his arguments and, accordingly, affirm.

DISCUSSION

¶8 As noted, the only issue concerns the sufficiency of the evidence to support the jury’s guilty verdict on the felon in possession of a firearm charge. When reviewing the sufficiency of the evidence, we will reverse a conviction only if “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, 755 (1990). Thus, an appellate court must “search the record to support the conclusion reached by the fact finder.” *State v. Owen*, 202 Wis. 2d 620, 634, 551 N.W.2d 50, 56 (Ct. App. 1996). When the evidence supports more than one inference, this court must accept the inference that supports the jury’s verdict. *See State v. Routon*, 2007 WI App 178, ¶17, 304 Wis. 2d 480, 490, 736 N.W.2d 530, 535.

¶9 The crime of possession of a firearm by a felon has two elements—a prior felony conviction and the possession of a firearm. WIS. STAT. § 941.29(2);

State v. Black, 2001 WI 31, ¶18, 242 Wis. 2d 126, 141–142, 624 N.W.2d 363, 370–371. The statute “makes no reference to intent and ... the State is only required to show that the felon ‘possessed’ the firearm with knowledge that it is a firearm.” *Id.*, 2001 WI 31, ¶19, 242 Wis. 2d at 142, 624 N.W.2d at 371. Possession “means that the defendant knowingly had actual physical control of a firearm.” *Ibid.* (quoted source omitted). “Firearm” means “a weapon which acts by the force of gunpowder.” WIS JI—CRIMINAL 1343; *see also State v. Rardon*, 185 Wis. 2d 701, 706, 518 N.W.2d 330, 331–332 (Ct. App. 1994).

¶10 Camacho stipulated that he had a prior felony conviction. Therefore, the only issue is whether the State proved the element of possession of a firearm.

¶11 Camacho asserts that the jury’s “not guilty” verdict on the recklessly endangering safety charge “gives credence to the fact that there was not sufficient support for a guilty verdict” on the felon in possession of a firearm charge. We are not persuaded.

¶12 The jury’s “not guilty” verdict on the recklessly endangering safety charge, and any implicit rejection of Castro’s testimony regarding Camacho’s role in that incident, does not compel the conclusion that the jury rejected all of Castro’s testimony as not credible. A jury may believe part of a witness’s testimony and disbelieve another part of the same witness’s testimony. *See State v. Saunders*, 196 Wis. 2d 45, 53–54, 538 N.W.2d 546, 550 (Ct. App. 1995). As noted by the circuit court in its postconviction decision, “[t]he jury could have reasonably believed that [Camacho] gave David Castro the gun but that he did not

encourage Castro to shoot at Penelton” so that Camacho was not a party to the crime of first-degree recklessly endangering safety.²

¶13 Additional evidence supports the jury’s verdict. Castro testified that he shot at Penelton with a gun that Camacho had given him. Castro testified that the gun looked like a .357 magnum. The jury saw photographs showing Camacho holding that same type of gun. Officer Randazzo testified that he was familiar with that model of firearm and that the weapon shown in the photograph did not appear to be a facsimile weapon. Detective Anderson opined that two of the photographs were taken on May 15, 2006, the date of the shooting and the date on which the Information alleged that Camacho possessed a firearm.³ The State presented sufficient credible evidence that Camacho possessed a firearm.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

² WISCONSIN STAT. § 941.30(1) proscribes “recklessly endanger[ing] another’s safety under circumstances which show utter disregard for human life.” To obtain a conviction, the State must prove three elements beyond a reasonable doubt: (1) the defendant endangered the safety of another human being; (2) the defendant endangered the safety of another by criminally reckless conduct; and (3) the circumstances of the defendant’s conduct showed utter disregard for human life. See WIS JI—CRIMINAL 1345.

³ The existence of an alternate inference is immaterial. See *State v. Routon*, 2007 WI App 178, ¶17, 304 Wis. 2d 480, 490, 736 N.W.2d 530, 535 (“If more than one inference can reasonably be drawn from the historical facts presented at the trial, [the appellate court] accept[s] the inference drawn by the fact-finder, even if other inferences could be drawn.”).

