

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 21, 2009

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. 2008AP588-CR

Cir. Ct. No. 2006CF360

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANCELMO PONCE-SANCHEZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: DONALD R. ZUIDMULDER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Ancelmo Ponce-Sanchez appeals a judgment convicting him of possessing more than forty grams of cocaine with intent to deliver as a party to a crime and maintaining a drug trafficking place. He also appeals an order denying his postconviction motion. Ponce-Sanchez contends the

State failed to prove he had knowledge of the drugs and drug activities or had dominion and control over the drugs. Therefore, he contends the guilty verdicts are based entirely on his status as the lessee of the premises. Based on that contention, he argues the charges are multiplicitous and the jury was improperly instructed. Because we reject the underlying premise that the convictions were based solely on Ponce-Sanchez's status as lessee and the remaining issues were not properly preserved, we affirm the judgment and order.

¶2 Police executed a search warrant at Ponce-Sanchez's residence. They found cocaine in six separate locations, three in the basement and three on the main floor. They found small amounts of cocaine in both bedrooms, one quarter ounce of cocaine in a linen closet, and 323.89 grams of cocaine in bags in the basement. Ponce-Sanchez's fingerprints were found on a paper bag and a plastic baggie containing the cocaine found in the basement. Officers also found two electronic scales and a "grinder" that appeared to be used to modify tires for the purpose of drug smuggling. An officer testified the total amount of cocaine seized would supply 13,000 doses with a street value of approximately \$130,000.

¶3 Immediately after the search, Ponce-Sanchez told an officer he lived in the house for approximately five or six months and his brother, Julian, had moved in approximately three or four months ago. A cousin also lived in the house and slept in the living room. Ponce-Sanchez told the officer his bedroom was the southeast bedroom, the one where officers found a DVD jacket with a plastic baggie of cocaine and some loose cocaine inside.

¶4 At trial, Julian, who had already been convicted of possessing cocaine with intent to deliver, testified the drugs were his and Ponce-Sanchez knew nothing about the drugs in the house or the drug business. He testified the

southeast bedroom was his, and also took responsibility for the cocaine found in the other bedroom. He also testified he was living in the house first and Ponce-Sanchez moved in later. Ponce-Sanchez also testified he knew nothing of Julian's cocaine business and had never seen drugs in the residence. He testified he and Julian moved into the house at approximately the same time. He explained his fingerprints on the bags by testifying he would grab whatever bag was available in the kitchen when he packed his lunch and his fingerprints could be on any bag his brother later used to package drugs. The jury disbelieved his testimony and convicted him of both offenses.

¶5 When reviewing the sufficiency of the evidence, we affirm the jury's verdict if the evidence adduced, believed and rationally considered by the jury was sufficient to prove the defendant's guilt beyond a reasonable doubt. *See State v. Bowden*, 2007 WI App 234, ¶14, 306 Wis. 2d 393, 742 N.W.2d 332. We review the evidence in the light most favorable to the verdict and, if the evidence permits drawing more than one reasonable inference, we draw the one that supports the verdict. *Id.* The credibility of witnesses and the weight of the evidence as well as resolving inconsistencies in witnesses' testimony are for the trier of fact. *Id.*

¶6 The State presented sufficient evidence to support the inference that Ponce-Sanchez knowingly possessed cocaine with intent to deliver and had dominion and control over the house and the drugs. The large amount of cocaine found in various locations, including Ponce-Sanchez's bedroom and a linen closet accessible to all members of the household, his fingerprints on the bags containing the largest quantity hidden in the basement, and the visible scales and tools for drug smuggling allow the inference that Ponce-Sanchez knew of the presence of the drugs and was complicit in the plan to distribute them. Therefore, we reject

Ponce-Sanchez's contention he was convicted of both offenses solely on the basis of being a leaseholder.

¶7 Ponce-Sanchez's arguments that the charges are multiplicitous and that the jury was improperly instructed fail for two reasons. First, the arguments are based on the false premise that he was convicted solely on the basis of his status as a leaseholder. Second, the issues were not properly preserved by timely objection. To preserve a multiplicity claim for appellate review, a defendant must raise the issue prior to the time the case is submitted to the jury. *See State v. Koller*, 2001 WI App 253, ¶44, 248 Wis. 2d 259, 635 N.W.2d 838. An objection to the jury instructions must be made before the instruction is given. Under WIS. STAT. § 805.13(3) (2005-06), failure to object at the conference constitutes a waiver of any error in the proposed instructions or verdict.

By the Court.—Judgment and order affirmed.

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

