COURT OF APPEALS
DECISION
DATED AND FILED

November 4, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP1495-FT **Cir. Ct. No. 2008JV683**

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

IN THE INTEREST OF SUMMER S. W., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SUMMER S. W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County: BARBARA H. KEY, Judge. *Affirmed*.

¶1 NEUBAUER, P.J.[1] Summer S.W. appeals from a dispositional order adjudicating her delinquent for possessing a dangerous weapon on school premises. Summer argues that there is insufficient evidence to support the charge because the facts of record do not support a finding that Summer "knowingly" possessed the folding knife on school grounds. Based on our review of the record, we affirm.

FACTS

¶2 On November 19, 2008, the State filed a delinquency petition under WIS. STAT. ch. 938 alleging that Summer had committed two counts of possessing a dangerous weapon on school premises contrary to WIS. STAT. § 948.61(2)(a). The facts underlying the delinquency petition, as testified to at the factfinding hearing, are brief. The assistant principal of Summer's high school, Jay Jones, testified that on October 2, 2008, he called Summer to his office to question her about the possibility that she was in possession of prescription drugs. She denied having any prescription drugs and Jones searched her purse.[2] During the search, Jones discovered "a pink box cutter, a lot of makeup and then … a folding blade knife at the bottom of the backpack." Jones described the folding knife, which was introduced as an exhibit at the hearing, as having a blade about two and one-half inches long and partially serrated. Jones testified: "In regards to the folding blade knife … [Summer] had said that she had forgotten that [it] was in the purse.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] Jones initially described the purse as a "backpack," but later clarified that "[i]t was more of a purse than a backpack."

I believe she knew that the box cutter was in the purse but she did not think that that was an item that was illegal."

¶3 Summer testified that her purse is approximately twelve inches long and six inches high, similar to a plastic tote. According to Summer, the folding knife belonged to her dad, who had died in 2005. During the summer of 2008, Summer's cousin gave her the folding knife as a "memento," and she put it in her purse. She did not use the folding knife for anything and she only unfolded it once when her cousin first handed it to her. Summer testified that she did not realize that the pink box cutter, or utility knife, was in her purse "because [she had] so much stuff and [she] didn't really go through [her] purse." Summer recalled that Jones "found [her] father's knife first" and that she forgot that the utility knife was in there too.

¶4 When Summer was asked whether she thought the folding knife was a dangerous thing to carry around, she responded: "I wouldn't think … I'm going to have this in my purse so it's a dangerous weapon. I just thought it's my dad's knife, you know? It's in my purse. I wouldn't think of violence."

¶5 During closing arguments, Summer's defense counsel argued that the knives found were not "dangerous weapons" and that Summer did not knowingly possess the knives when they were found in her purse on October 2, 2008. While the court agreed that the utility knife was not a dangerous weapon and dismissed that count, it declined Summer's request to dismiss the count based on the folding knife. The court found that the State had met its burden of proof on that count and entered a dispositional order as to one count of possession of a dangerous weapon on school premises. Summer appeals.

DISCUSSION

¶6 An alleged delinquency, like an alleged offense in a criminal complaint, must be supported by evidence beyond a reasonable doubt. *See* WIS. STAT. § 938.31(1). "[I]t is axiomatic in the law that the state bears the burden of proving all elements of a crime beyond a reasonable doubt." ***State v. Schulz***, 102 Wis. 2d 423, 427, 307 N.W.2d 151 (1981). We apply this same standard to determine the sufficiency of the evidence to support a delinquency determination. ***State v. Hezzie R.***, 219 Wis. 2d 848, 866-67, 220 Wis. 2d 360, 580 N.W.2d 660 (1998). Evidence of delinquency may be either direct or circumstantial and is reviewed in the same manner concerning a sufficiency of the evidence challenge. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990). "[A]n appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the [delinquency adjudication], is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See* ***id.*** at 507.

¶7 The elements of WIS. STAT. § 948.61 are as follows: (1) the defendant possessed an object ("possessed" means that the defendant knowingly had the object under his or her actual physical control), (2) the object was a dangerous weapon, (3) the defendant possessed a dangerous weapon on school premises, and (4) the defendant knew he or she possessed a dangerous weapon and knew that he or she was on school premises. WIS JI—CRIMINAL 2179. Because Summer concedes that the folding knife is a dangerous weapon, the only issue is whether there is sufficient evidence to support a finding that she knowingly possessed the weapon on school premises. We conclude that there is.

¶8 Summer's sole argument on appeal is that the trial court relied on an erroneous recollection of Summer's testimony to infer that Summer knowingly possessed a dangerous weapon and, absent that inference, there is insufficient evidence to prove beyond a reasonable doubt that Summer knew the knife was in her purse. Summer's argument relates to a trial court observation regarding her reaction when the folding knife and utility knife were found in her purse. The trial court found that "Summer's reaction when confronted with the one indicates to the Court [that] she was aware of the other being there." Because she testified that the folding knife was found first, Summer contends that it was the utility knife, and not the folding knife, that she was aware of having in her purse. Relying on ***Poellinger***, Summer argues, that absent this mistaken recollection of testimony, the evidence that she knowingly possessed the folding knife is so insufficient in probative value and force that no trier of fact, acting reasonably could have found guilt beyond a reasonable doubt. We disagree.

¶9 In addressing the issue of whether Summer "knowingly possess[ed]" the knife at school, the trial court explained:

> [T]he next issue is knowingly possess. The Court has to look at all the facts and circumstances surrounding this. Now, again, Summer's reaction when confronted with the one [knife] indicates to the Court that she was aware of the other being there.
>
> [R]eally it's—number one, it's in her possession. Is it reasonable to infer she knew it was there? Well, yes. It's in her bag and her possession. It's something that certainly is capable of again causing death or great bodily harm….
>
> Just because Summer said she didn't realize it was in there [her purse] the Court doesn't necessarily buy that under all the circumstances. Number one, it was in her possession. It was in her bag….
>
> She was taken … into the office…. This is found in her bag. For her to say she just didn't know it was there, I

> think is more of a self-serving statement given the nature of this weapon and her reaction when being searched.
>
> The Court … can infer by the possession itself that she knew it was there and then by her reaction I think more than anything certainly shows that she knew it was there.

Based on our review of the trial court's findings, Summer's challenge places too much emphasis on the trial court's statement that her "reaction when confronted with the one indicates … that she was aware of the other being there" given the conflicting testimony as to the order in which the knives were found and the trial court's credibility determinations.

¶10 Summer testified that Jones found her father's folding knife first, and then she remembered that the utility knife was in her purse, too. She stated:

> I thought … [the assistant principal was] just going to find all my makeup … and then he found my dad's knife and then I was like, oh, no. I forgot that the utility knife was in there too and that's going to be a problem because he just found a knife and now he's going to find the other one and like I was so shocked.

Summer's testimony conflicted with Jones' testimony as to the order in which the knives were found. While Summer testified that she was shocked by Jones' discovery of the knives, the trial court did not find her testimony credible, instead characterizing it as "self-serving." Summer argues that the factfinder did find her to be credible because it, at times, relied on her testimony—her reaction. However, the factfinder, as the ultimate arbiter of credibility, has the power to accept one portion of a witness's testimony and reject another portion; a factfinder can find that a witness is partially truthful and partially untruthful. ***O'Connell v. Schrader***, 145 Wis. 2d 554, 557, 427 N.W.2d 152 (Ct. App. 1988). We defer to the factfinder's function of weighing and sifting conflicting testimony in part because of the factfinder's ability to give weight to nonverbal attributes of the

witnesses. *See* ***State v. Wilson***, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989). Here, the evidence was sufficient to support a conclusion that Summer's reaction manifested an apprehension of the folding knife's imminent discovery, given Jones' testimony that he found the utility knife first, as well as Summer's statement to him that she did not believe that there was anything wrong with possessing the utility knife.

¶11 Summer further argues that although the court "mentioned a possible conclusion based on the folding knife's presence in [Summer's] purse, it was not persuaded by the inference." However, the trial court's statements, read as a whole, indicate that the court inferred Summer's knowledge of the knife's presence because she put it in her purse, which was approximately six inches high and twelve inches wide, and given the nature of the weapon—a folding knife with a two and one-half inch serrated blade that the court found could "very easily" cause death or great bodily harm with "a slash" or "one stab wound." We conclude that this inference is a reasonable one. Implicit in the trial court's decision is the weight given to Summer's testimony that she had placed the folding knife in her purse, and it's rejection of the notion that she had forgotten it was there.

CONCLUSION

¶12 Viewing the evidence most favorably to the State, we conclude that there was sufficient evidence for the trial court to find that Summer knowingly possessed a dangerous weapon on school premises. Accordingly, we affirm the trial court's dispositional order finding Summer delinquent on one count of possessing a dangerous weapon on school premises.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.