COURT OF APPEALS
DECISION
DATED AND FILED

December 17, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1675-CR **Cir. Ct. No. 01CM10070**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

COREY D. JOHNSON,

DEFENDANT-APPELLANT.

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

¶1 CURLEY, J.[1] Corey D. Johnson appeals from the judgment of conviction entered after a jury convicted him of obstructing an officer, and carrying a concealed weapon, contrary to WIS. STAT. §§ 946.41(1) and 941.23

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

(1999-2000).[2] Johnson claims that the State's evidence was insufficient to support a finding of guilt for the charge of carrying a concealed weapon. This court disagrees and affirms.

I. BACKGROUND.

¶2 At approximately 1:45 a.m. on November 5, 2001, Milwaukee Police Officers Keith Ruplinger and Glenn Meister were dispatched to 4747 North Hopkins Street in Milwaukee in response to a shooting. When they arrived, the officers observed that Johnson was being treated for a gunshot wound. Officer Ruplinger spoke with Johnson. Johnson stated that he had parked his car and was on his way to the Mecca Dance Club when two males approached him and robbed him of his coat, car keys, and money. Johnson, however, was unable to provide any more details of the alleged shooting, his assailants, or their weapons.

¶3 Later that night at the hospital, while being treated for his gunshot wound, Johnson changed his account of the events when questioned by two Milwaukee Police detectives, John Jones and David Salazar. When the officers questioned his story, Johnson became evasive and upset, stating, "Well, I just shot myself." Thereafter, Johnson gave yet another variation of his original account of the events – giving a more detailed description of one of his assailants and the gun. When Detective Jones commented that Johnson had not recalled any of that information earlier, Johnson became agitated and again stated, "Well, I shot myself. I don't want to get in trouble, and I'm not talking to you anymore."

[2] All references to the Wisconsin statutes are to the 1999-2000 version unless otherwise noted.

¶4 The detectives then examined Johnson's pants and found a small hole in the groin area of the pant. By its size and characteristics, Detective Salazar concluded that the hole did not appear to have been made by a bullet entry. Rather, he deduced that Johnson had accidentally discharged the weapon while it was inside his pants.

¶5 Detective Jones also noted that the injuries Johnson sustained as a result of the bullet path were an entry wound to his middle right thigh, an exit wound behind his right knee, and another entry wound to the top of his right calf. Detective Jones stated at trial that such injuries were inconsistent with Johnson's account of the events, but consistent with his training and investigation of accidental discharges of weapons. Accordingly, Detective Jones also concluded that the weapon was concealed somewhere in the waistband of Johnson's pants when it was accidentally discharged.

¶6 Consequently, Johnson was charged with one count of obstructing an officer and one count of carrying a concealed weapon. After a jury trial, Johnson was found guilty on both counts.

II. ANALYSIS.

¶7 John does not challenge his conviction for obstructing an officer, he only appeals his carrying a concealed weapon conviction. To prove that Johnson was guilty of carrying a concealed weapon contrary to WIS. STAT. § 941.23, the State needed to satisfy three elements beyond a reasonable doubt: (1) that Johnson went armed with a dangerous weapon; (2) that Johnson was aware of the presence of the weapon; and (3) that the weapon was concealed. *See* ***State v. Keith***, 175 Wis. 2d 75, 78-79, 498 N.W.2d 865 (Ct. App. 1993). Johnson fails to address the first and second elements of his concealed weapon conviction. Because Johnson

has failed to challenge these elements, we decline to address them. *See* ***Reiman Associates, Inc. v. R/A Adver., Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1985) (stating that issues that have not been briefed or argued on appeal are deemed abandoned). With respect to the third element, Johnson contends that there is insufficient evidence to establish that the weapon was actually concealed.

¶8 Whether a case is based on direct or circumstantial evidence, the standard for reviewing the sufficiency of the evidence to support a conviction is the same. ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). "An appellate court will not reverse a conviction unless 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." ***Id***. If more than one inference can be drawn from the historical facts, this court is bound to accept the inference drawn by the trier of fact, unless it is incredible as a matter of law. *See* ***id.*** at 506-07. After careful consideration of the facts of Johnson's case, this court cannot conclude that no trier of fact could have found Johnson guilty beyond a reasonable doubt.

¶9 Although there was no direct evidence, the State met its burden. At trial, two Milwaukee Police officers and two detectives testified that while they were initially investigating Johnson's "robbery," they soon suspected that Johnson had not been the victim of a shooting, but had actually shot himself. Both of the officers and the two detectives explained that they came to this conclusion based on the physical and circumstantial evidence: (1) no shell casing was found at the scene of the shooting, which would have been consistent with an armed robbery and shooting; (2) Johnson's pants had no evidence of the entry of a bullet or blood from the impact; indeed, Johnson's wound and the path of the bullet were

consistent with a self-inflicted bullet wound resulting from the discharge of a weapon as he concealed it in the waistband of his pants; (3) Johnson's wound and the path of the bullet were inconsistent with Johnson's description of the events; and (4) Johnson's account of the events varied – he gave multiple versions of how the shooting occurred and could give no clear description of what his alleged assailants looked like. Other than testifying as to his own version of the events that took place on the evening of November 5, 2001, Johnson failed to refute any of the State's evidence.

¶10 Although there is evidence that might support a different result, this court will not substitute its judgment for that of a jury. *See* ***State v. Edmunds***, 229 Wis. 2d 67, 73, 598 N.W.2d 290 (Ct. App. 1999). In the present case, while more than one inference could be drawn from the evidence, this court must follow the inference that supports the jury's findings because that evidence is not incredible as a matter of law. *See* ***Poellinger***, 153 Wis. 2d at 506-07. This court concludes that the evidence, when viewed most favorably to the State and the conviction, is sufficient, such that a reasonable jury could have found that Johnson was carrying a concealed weapon beyond a reasonable doubt.

¶11 Based upon the foregoing reasons, the trial court is affirmed.

By the Court.—Judgment affirmed.

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