COURT OF APPEALS
DECISION
DATED AND FILED

March 2, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1462-CR **Cir. Ct. No. 01CF000590**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TYESHAWN D. COHENS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Tyeshawn Cohens appeals a judgment convicting him of possession with intent to deliver cocaine as party to a crime and delivery of less than five grams of cocaine. Cohens argues that the trial court erred by admitting other acts evidence and by unduly restricting his cross-examination of a witness. We reject these arguments and affirm the judgment.

BACKGROUND

¶2 An amended Information charged Cohens, Veldee Banks, Terrence Madison and Lawrence Northern each with one count of possession with intent to deliver cocaine as party to a crime. The Information likewise charged Cohens alone with one count of delivery of cocaine. The other nine counts of the Information were spread among the three co-defendants.[1] Cohens was ultimately convicted upon a jury's verdict. The court imposed concurrent sentences consisting of seventeen years' initial confinement followed by ten years' extended supervision on the possession with intent to deliver conviction and ten years' imprisonment followed by five years' extended supervision on the delivery conviction. This appeal follows.

DISCUSSION

A. Other Acts Evidence

¶3 Cohens argues the trial court erred by admitting other acts evidence. Whether to admit evidence is addressed to the trial court's discretion. ***State v. Pharr***, 115 Wis. 2d 334, 342, 340 N.W.2d 498 (1983). An appellate court will sustain an evidentiary ruling if it finds that the trial court examined the relevant facts, applied a proper standard of law and, using a demonstrative rational process, reached a conclusion that a reasonable judge could reach. ***Loy v. Bunderson***, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

[1] Northern was charged with one count of possession with intent to deliver cocaine as party to a crime and Banks was charged with one count of possession with intent to deliver cocaine. Madison was charged with five counts of delivery of cocaine (one as party to a crime) and one count each of possession with intent to deliver cocaine and possession with intent to deliver THC, both as party to a crime.

¶4 Cohens challenges the trial court's decision to admit evidence that Cohens sold crack to Hollie Peterson on an ongoing basis in 2000. Because we conclude that any error by admitting this evidence was harmless, we decline to address whether the evidence was admissible.[2] The test for harmless error is "whether there is a reasonable possibility that the error contributed to the conviction." ***State v. Dyess***, 124 Wis. 2d 525, 543, 370 N.W.2d 222 (1985). A reasonable possibility is a "possibility sufficient to undermine our confidence in the conviction." ***State v. Williams***, 2002 WI 58, ¶50, 253 Wis. 2d 99, 644 N.W.2d 919 (citations omitted).

¶5 Here, Peterson's testimony regarding Cohens' 2000 cocaine dealing comprised three pages of a several-hundred-page trial transcript. Peterson recounted that she met Cohens through a friend in Minnesota and bought cocaine from him over a period of months in 2000. Peterson testified that during that time, she initially purchased one-fourth ounce of cocaine from Cohens every two to three days and later increased that amount to one-half ounce. In addition to this challenged other acts evidence, however, Peterson testified regarding her drug-related contact with Cohens during the period of the charged offenses. Three other witnesses likewise testified about their observations of Cohens' role in a crack cocaine distribution ring.

¶6 Sherri Mitchell testified that on six or seven occasions she made arrangements for Northern to deliver cocaine to Madison and Cohens. Mitchell

[2] Cases should be decided on the narrowest possible grounds. ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989). Therefore, if a decision on one point disposes of the appeal, the appellate court will not decide the other issues raised. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938).

also testified that she saw Cohens with one kilogram of cocaine and observed Cohens cook cocaine at her residence on ten to twenty occasions. Mitchell additionally noted that she observed Cohens deliver cocaine to people from her residence numerous times and that she, in fact, obtained cocaine from Cohens to sell elsewhere. Adam Rindal testified that he had purchased crack cocaine from the co-defendants, including Cohens. Finally, Jennifer Ellefson testified that she observed Cohens join Banks and Madison in cooking cocaine powder on one or two occasions. Ellefson also observed Cohens cooking cocaine on his own at Mitchell's house. We conclude that evidence of Cohens' 2000 drug dealing had a *de minimus* effect on the jury because of the overwhelming evidence of his guilt. *See* ***Dyess***, 124 Wis. 2d at 541-42.

B. Cross-Examination

¶7 Cohens argues that the trial court erred by unduly restricting his cross-examination of Peterson. Specifically, Cohens challenges the trial court's decision to prohibit inquiry on the maximum penalty Peterson was exposed to for the dismissed charges against her, as well as the presumptive minimum penalty. The scope of cross-examination is within the trial court's discretion. ***State v. Olson***, 179 Wis. 2d 715, 722, 508 N.W.2d 616 (Ct. App. 1993). We will not overturn such a decision unless there was an erroneous exercise of discretion. *See* ***Schultz v. Darlington Mut. Ins. Co.***, 181 Wis. 2d 646, 656, 511 N.W.2d 879 (1994).

¶8 Cohens argues that evidence of what he describes as "sentencing leniency" was relevant to Peterson's bias and his inability to cross-examine her on that leniency violated his confrontation rights. We are not persuaded. The right to confrontation includes the right to cross-examine adverse witnesses to expose

potential bias. ***Delaware v. Van Arsdall***, 475 U.S. 673, 678-79 (1986). Although a defendant is entitled to significant latitude regarding the extent and scope of an inquiry to explicate a witness's bias, it is the trial court's duty to curtail any undue prejudice by limiting cross-examination, including the exclusion of bias evidence that would divert the trial to extraneous matters or confuse the jury by placing undue emphasis on collateral issues. ***State v. McCall***, 202 Wis. 2d 29, 41-42, 549 N.W.2d 418 (1996).

¶9 Here, the trial court allowed sufficient latitude on cross-examination to adequately permit Cohens to test Peterson's credibility and properly excluded the proffered evidence on grounds that its prejudicial value far outweighed its probative value. On direct examination, Peterson acknowledged that she had previously been adjudicated delinquent or convicted on eleven occasions. The jury heard that Peterson had initially been charged as a co-defendant with Cohens. Peterson acknowledged, however, that in exchange for her no contest plea to a charge of delivery of more than 100 grams of cocaine, the State had agreed to dismiss additional counts and cases against her. The jury also heard that as part of her plea agreement, the State would recommend five years' initial confinement followed by three years' extended supervision.

¶10 On cross-examination, Peterson acknowledged she had initially been charged with fourteen counts and knew she originally faced a maximum exposure of 390 years. Additionally, Peterson testified that four separate cases, with seven additional counts ranging from bail jumping to delivery of cocaine had been dismissed. Finally, Peterson conceded that in addition to being a drug user, she had sold drugs on hundreds, if not thousands, of occasions in Eau Claire.

¶11 In excluding the proffered evidence regarding the maximum penalty for the dismissed cases, as well as the presumptive minimum penalty, the trial court noted that "the jury is not supposed to know the possible affect [sic] of their verdict and … if we get into all of these maximums and presumptive minimums and the substantial potential fines … that could influence their decision as it reflects the remaining defendants." The court further stated: "I'm really troubled … talking about penalties because the jury is not to concern themselves with penalties." *See* ***State v. Muentner***, 138 Wis. 2d 374, 391, 406 N.W.2d 415 (1987) (Wisconsin courts do not generally disclose penalties to a jury.).

¶12 The trial court expressed concern that additional cross-examination on the penalties issue would be cumulative, confuse the issues and waste time. Cohens had already demonstrated that Peterson bargained away "potentially three hundred, four hundred years" and the State would "ask for five years of prison and three years' supervision." Moreover, because the jury knew that Peterson had bargained away approximately 400 years of exposure in the present case, there was little or no probative value in telling the jury about the total number of years bargained away on the dismissed cases. With respect to the presumptive minimum penalty, efforts to explain to a jury that an offense carries a minimum penalty that is merely discretionary could likewise confuse the jury. We conclude the trial court allowed Cohens to cross-examine Peterson regarding her plea agreement in a manner that exposed her bias and comported with his confrontation rights.

By the Court.—Judgment affirmed.

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