COURT OF APPEALS
DECISION
DATED AND FILED

February 8, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-3257-CR **Cir. Ct. No. 02CF000059**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MIQUEL D. BROWN,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Miquel Brown appeals a judgment convicting him of two counts of delivering cocaine and one count of possessing more than fifteen grams of cocaine with intent to deliver. He argues that the State presented insufficient evidence because it did not place the cocaine into evidence, witnesses who saw the crack cocaine that he possessed with intent to deliver were not

qualified to establish it was cocaine, and the State failed to provide sufficient evidence of the weight of the cocaine he possessed. He also argues that his speedy trial rights were violated, that the court improperly permitted the State to amend the information to add the possession charge, and the possession charge should have been separately tried. We reject these arguments and affirm the judgment.

¶2 The State presented testimony from Pamela Boerger, a police informant, that she purchased crack cocaine from Theresa LaRock on two separate occasions, June 8 and July 12, 2001. A crime lab analyst identified the substances Boerger bought as crack cocaine. During the second sale, LaRock called "Red" to deliver some crack to sell to Boerger. A surveillance officer, Timothy Hoyt, observed Brown arrive at LaRock's residence. Hoyt knew that Brown was known as "Red" on the street. LaRock sold crack cocaine to Boerger after Brown's arrival. Boerger was also given "Red's" phone number. It was later determined to be Brown's phone number. LaRock testified that she twice sold Boerger crack cocaine that she received from Brown and that Brown paid her $20 for each sale.

¶3 Crystal Severson, LaRock's ex-roommate and Brown's ex-girlfriend, testified that she lived with LaRock during the time of the sales. She saw Brown chopping up a rock of cocaine the size of a two-liter soda bottle cap into pieces the size of a pencil eraser. Brown asked her to deliver cocaine for him on two occasions, and she completed one of those deliveries. She also testified that she accompanied Brown to Minneapolis two to three times a week and that he would purchase $200 to $300 worth of cocaine on those trips. On three occasions in April and May 2001, she saw what she believed was crack cocaine in plastic bags in Brown's possession.

¶4 A special agent for the Wisconsin Department of Justice, division of narcotics enforcement testified that crack cocaine the size of a soda bottle cap would be approximately 7 grams and that $300 to $400 would buy approximately 7 grams of crack in Minneapolis.

¶5 The State presented sufficient evidence to support the verdicts. When reviewing sufficiency of the evidence, this court must view the evidence in the light most favorable to the verdicts and must permit the jury to determine the credibility of witnesses, the weight of the evidence. We must allow the jury to draw reasonable inferences from the testimony. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

¶6 The jury could reasonably infer from the testimony that the substances identified by the crime lab as cocaine and the larger pieces observed by LaRock and Severson were cocaine even though the items were not placed in evidence. A narcotics violation need not be proved by direct evidence, and there is no need for a sample of the narcotic seized to be placed before the jury. *See* ***United States v. Kelley***, 14 F.3d 1169, 1175 (7th Cir. 1994). The jury could reasonably find that LaRock and Severson, who sold crack cocaine for Brown, and witnessed him acquiring and packaging cocaine, were qualified to identify crack cocaine. Their testimony was supported by laboratory analysis of smaller amounts that LaRock sold to Boerger. From the size of the pieces LaRock and Severson observed, the amount Brown spent on the crack and the special agent's testimony on the price of cocaine, the jury could reasonably find that Brown possessed with intent to deliver more than fifteen grams of cocaine, excluding the amounts sold to Boerger.

¶7 Next, Brown has not established any violation of his right to a speedy trial. His argument mixes his statutory speedy trial right with the remedies for a violation of his constitutional speedy trial right. The remedy for failing to bring him to trial within ninety days is release from his bond. *See* WIS. STAT. § 971.10(4). The constitutional speedy trial right is not implicated until a substantially longer delay occurs. *See e.g.*, ***Doggett v. United States***, 505 U.S. 647, 651 (1992). Brown was brought to trial eight and one-half months after his arrest. That delay does not violate his constitutional speedy trial right.

¶8 The trial court appropriately allowed the State to amend the information to add the possession with intent to deliver charge because it is transactionally related to the sales. *See* ***State v. Williams***, 198 Wis. 2d 516, 528-29, 544 N.W.2d 406 (1996). The information alleged the possession with intent occurred between March and July 2001. The deliveries occurred June 8 and July 12, 2001. The illegal substance was the same. The same witnesses were involved in both charges and the crimes involved a common scheme or plan. Because the crimes are transactionally related and constitute parts of a common scheme or plan, the trial court properly allowed the State to amend the information to add the additional count and properly exercised its discretion when it allowed the three counts to be tried together. *See* WIS. STAT. § 971.12(1).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).