COURT OF APPEALS
DECISION
DATED AND RELEASED

December 7, 1995

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62(1), STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2594-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BRIAN L. EDWARDS,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Dane County: STUART A. SCHWARTZ, Judge. *Affirmed*.

Before Eich, C.J., Gartzke, P.J., and Sundby, J.

PER CURIAM. Brian L. Edwards appeals from a judgment of conviction and postconviction order denying his motion to vacate the conviction and enter a judgment of acquittal. The court found Edwards guilty of possessing between 3 and 10 grams of cocaine base, with intent to deliver, within 1000 feet of a school. On appeal, Edwards argues that there was insufficient evidence of the three elements of the crime: (1) possession; (2) intent

to deliver; and (3) possession within 1000 feet of a school. Because sufficient evidence supports the finding of guilt, we affirm.

Upon a challenge to the sufficiency of the evidence to support a jury finding of guilt, we may not substitute our judgment for that of the jury unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no reasonable jury could have found guilt beyond a reasonable doubt. ***State v. Poellinger,*** 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990). We will uphold the verdict if any possibility exists that the jury could have drawn the inference of guilt from the evidence. *See* ***id.*** at 507, 451 N.W.2d at 758.

The jury is the sole arbiter of witness credibility. ***State v. Serebin,*** 119 Wis.2d 837, 842, 350 N.W.2d 65, 68 (1984). The jury, not this court, resolves conflicts in the testimony, weighs the evidence and draws reasonable inferences from basic facts to ultimate facts. ***Poellinger,*** 153 Wis.2d at 506, 451 N.W.2d at 757. When the record contains facts that support more than one inference, we must accept and follow the inference drawn by the jury unless the evidence on which that inference is based is incredible as a matter of law. ***Id.*** at 506-07, 451 N.W.2d at 757.

Edwards waived his right to a jury trial and was tried before the court. When the court is the fact finder, a challenge to the sufficiency of the evidence is measured against the same standard of review as when a jury is the fact finder. *See* ***Gaddis v. State***, 63 Wis.2d 120, 127, 216 N.W.2d 527, 531 (1974).

The following evidence was presented at trial. A City of Madison police officer, who knew Edwards from prior contacts and knew that he did not have a driver's license, saw Edwards driving. A passenger was also in the car. The officer followed the car and observed Edwards' vehicle pass within 950 feet of a school and stop outside a liquor store. Edwards and the passenger entered the store. The officer stopped and arrested Edwards for operating after revocation.

The officer performed a "pat-down" search of Edwards at the scene but did not find any weapons or contraband. The officer did not handcuff

Edwards but placed him in the back seat of the squad car, where he was alone for several minutes. Eventually the officer transported Edwards to the police station, where he searched him again and found several slips of paper bearing phone numbers and $225 in currency. After Edwards was inside the police station, the arresting officer searched the squad car and found a plastic bag containing thirty individually wrapped pieces of cocaine base wedged into the back seat.

The officer testified that he searched his squad car at the beginning of his duty shift and there was no cocaine in the back seat. The officer testified that he would have seen the cocaine if it had been there at the time of the search. The search is routine police procedure and includes removing the back seat. The officer also testified that no one but Edwards had been in the squad car prior to the discovery of the cocaine.

Edwards argues that the evidence does not permit the fact finder to infer that the cocaine found in the squad car was his cocaine. Edwards suggests that such an inference is speculative and unreasonable because no cocaine was discovered during the pat-down search. Edwards acknowledges that the inference of possession rests largely on the officer's testimony that he searched the squad car before his shift and saw no cocaine in the back seat. Edwards fails to explain, however, why the fact finder could not accept the officer's testimony as credible. The record contains sufficient evidence that Edwards possessed cocaine.

Edwards also contends that there is no evidence that he intended to deliver the cocaine. We disagree. The plastic bag contained thirty individually wrapped pieces of cocaine base, with a street value of between $1200 and $1400. Edwards possessed a sizeable amount of currency and several pieces of paper bearing phone numbers. The record contains sufficient evidence indicating Edwards' intent to deliver the cocaine. *See* ***State v. Prober,*** 87 Wis.2d 423, 437-38, 275 N.W.2d 123, 128-29 (Ct. App. 1978), *rev'd on other grounds,* 98 Wis.2d 345, 297 N.W.2d 1 (1980).

Edwards next contends that there is no evidence that he possessed the cocaine within 1000 feet of a school. Edwards does not dispute that he drove within 1000 feet of a school. The enhancing statute of § 161.49, STATS.,

applies if a person drives within 1000 feet of a school while in possession of cocaine with intent to deliver. ***State v. Rasmussen,*** 195 Wis.2d 109, 114, 536 N.W.2d 106, 108 (Ct. App. 1995). Edwards does dispute, however, the inference that he possessed the cocaine when he drove near the school. Edwards suggests that his passenger could have possessed the cocaine at that time or that he could have obtained the cocaine at the liquor store.

The court could reasonably infer that Edwards possessed the cocaine when he drove within 1000 feet of the school. At trial, Edwards testified that he noticed the squad car before he drove within 1000 feet of the school. Edwards also knew that the squad car had stopped at the liquor store. We agree with the State that, given Edwards' awareness of the officer's presence, it is unlikely that Edwards would try to acquire cocaine either from the passenger or at the liquor store. The inference that Edwards possessed the cocaine when he drove within 1000 feet of a school is reasonable based on the evidence. This court must accept the inference drawn by the fact finder. ***Poellinger,*** 153 Wis.2d at 506-07, 451 N.W.2d at 757.

By the Court.—Judgment and order affirmed.

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