COURT OF APPEALS
DECISION
DATED AND RELEASED

May 22, 1996

NOTICE

No. 95-1124-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANDREW M. SHERROD,

Defendant-Appellant.

APPEAL from judgments of the circuit court for Racine County: EMMANUEL VUVUNAS, Judge. *Affirmed*.

Before Anderson, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Andrew M. Sherrod appeals from judgments convicting him of being party to the crimes of possession of cocaine with intent to deliver and burglary with intent to commit a felony. On appeal, Sherrod claims that there was no evidence that he actually or constructively possessed cocaine or aided and abetted in the possession of cocaine by others. We disagree and affirm.

Upon a challenge to the sufficiency of the evidence to support a jury's verdict, 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. It is the jury's province to fairly resolve conflicts in the testimony, weigh the evidence and draw reasonable inferences from the facts. *See* ***id.*** at 506, 451 N.W.2d at 757. We must accept the reasonable inferences drawn from the evidence by the jury. ***Id.*** at 507, 451 N.W.2d at 757. If more than one reasonable inference can be drawn from the evidence, the reviewing court must adopt the inference which supports the conviction. ***State v. Hamilton***, 120 Wis.2d 532, 541, 356 N.W.2d 169, 173-74 (1984).

Sherrod was tried for two crimes: possession with intent to deliver a controlled substance and burglary with intent to commit a felony, both as parties to the crime. With regard to the controlled substance charge, the State had to prove that Sherrod possessed a substance, that the substance was cocaine base, that Sherrod knew or believed that the substance was cocaine base and that Sherrod possessed cocaine base with intent to deliver it. *See* WIS J I—CRIMINAL 6035. A person is a party to a crime if he or she directly commits the crime, intentionally aids and abets the commission of the crime, or is a party to a conspiracy to commit a crime. *See* § 939.05(2), STATS.

> A person intentionally aids and abets the commission of a crime when, acting with knowledge or belief that another person is committing or intends to commit a crime, he knowingly either
>
> (a)assists the person who commits the crime, or
>
> (b)is ready and willing to assist and the person who commits the crime knows of the willingness to assist.

WIS J I—CRIMINAL 400.

Sherrod argues that his mere presence at a Racine house where controlled substances were found was insufficient to establish actual or constructive possession of the substances or that he aided and abetted possession and delivery of controlled substances. We disagree. There was sufficient evidence from which the jury could infer Sherrod's guilt as party to the crime.

The charges against Sherrod arose out of activities in a residence located at 1804 Hamilton Street, Racine. The tenants of the property, Mary and Darryl Redmon, had vacated the property by February 5, 1994, and the landlord had not given permission to anyone else to be inside the residence after that date. On February 6, the landlord received a telephone call from the Racine police department regarding activity at the house and authorized the police to enter the premises. The landlord did not know any of the persons found there by police on February 6.

A neighbor of the residence, aware that the property should have been vacant as of February 5, noticed activity at the house on February 6. He saw two individuals unsuccessfully attempt to enter the house. Shortly thereafter, a vehicle later identified as owned by Sherrod pulled up to the house and someone from Sherrod's vehicle assisted everyone in entering the dwelling. A light came on in the kitchen and individuals brought items into the house and covered up a kitchen window. The neighbor then called the police. After the police arrived, the neighbor watched one man exit the house and head toward Sherrod's car. A police officer said something to the man, the man slipped and fell, got up and began to run.

Sergeant William Krenzke testified that he was dispatched to the Hamilton Street residence on February 6. He saw Sherrod leave the house and yelled at him to stop. Sherrod then ran from Krenzke and was captured by another officer.

Krenzke discovered that the front door lock of the house had been dismantled and removed. Krenzke was advised by police dispatch that the owner of the residence had advised the police department that there was unauthorized activity in the house and that it looked like people were moving in. Sherrod was identified at trial by the apprehending officer as the individual

he stopped that night. Another officer testified that he searched Sherrod after he was taken into custody and located $281 in cash on him.

Officer Mark Sorensen testified that he was dispatched to the Hamilton Street address on February 6. He entered the house through the front door and found Nakia Hayes and Nathan Sherrod (the defendant's brother) in the kitchen, and Melvin Waldrop and Gina Sago hiding in an upstairs bedroom. The vehicle in front of the residence belonged to the defendant and a white powdery substance was found in Sago's purse after it was recovered from the defendant's car. Police found scales, crack cocaine, a wad of money, beer bottles, a microwave and baggies in the kitchen. The house was devoid of furniture.

Investigator David Boldus of the Racine police department interviewed Sherrod on February 7. Sherrod told Boldus that he went to the house to pick up his girlfriend, Sago, and that he arrived with Angel Rivera. Sherrod explained that he ran from police because he was uncertain who was hailing him and the area is somewhat dangerous.

The parties stipulated that crack cocaine was taken from the house and evidence was presented that crack cocaine was being processed and packaged at the house. The State presented evidence that Sherrod's fingerprints were found on one of the beer bottles taken from the kitchen. Police officers testified that two pagers were recovered during the investigation and described the role pagers play in drug transactions.

Waldrop testified that he was on the premises on February 6 and it appeared to him that the people in the kitchen, Nathan and Andrew Sherrod, Hayes and Rivera, were preparing to process drugs.

Sherrod, a resident of Illinois, testified that he went to the Hamilton Street residence because he knew Darryl Redmon and wanted to spend the night there with his girlfriend, Sago, instead of renting a hotel room. Sherrod testified that when he arrived at the house, Rivera was already there. When Redmon did not return to the residence, Sherrod left the residence, saw the officer approaching him and fled. Sherrod testified that he believed

Redmon was in the process of moving but that Redmon still had the landlord's permission to be on the property. Sherrod denied that the drugs belonged to him or that he went there to buy or sell drugs. On cross-examination, Sherrod conceded that he saw cocaine on the premises along with drug paraphernalia.

Sherrod's testimony was inconsistent with the statement he gave to Investigator Boldus and the neighbor's testimony. Sherrod testified that Rivera and Hayes were already in the house with the kitchen light on before he arrived with Sago. He told Boldus that he and Rivera arrived together. The neighbor testified that the light did not go on until the vehicle owned by Sherrod arrived.

We agree with the State that there was evidence from which the jury could reasonably infer that Sherrod was party to the crime of possessing cocaine with intent to deliver. Although the jury could have believed Sherrod's version of events, it was not bound to do so. It was the jury's province to resolve conflicts in the testimony. ***Poellinger,*** 153 Wis.2d at 506, 451 N.W.2d at 757. We must accept the reasonable inferences drawn from the evidence by the jury.

In addition to evidence that Sherrod aided and abetted possession of cocaine with intent to deliver, we note that Sherrod fled from the police. Flight can be circumstantial evidence of consciousness of guilt. *See* ***State v. Winston***, 120 Wis.2d 500, 505, 355 N.W.2d 553, 556 (Ct. App. 1984). The jury was free to reject Sherrod's explanation for his flight from the officer.

Sherrod relies heavily on ***State v. R.B***, 108 Wis.2d 494, 322 N.W.2d 502 (Ct. App. 1982), to support his claim that there was insufficient evidence of actual or constructive possession of a controlled substance. ***R.B.*** is distinguishable because in that case the defendant was not charged as party to the crime and the State was required to prove that he possessed beer while a minor. Here, Sherrod was charged as party to the crime and the State met its burden of proof on that charge.

Finally, we reject Sherrod's challenge to the sufficiency of the evidence of his guilt of burglary because his challenge is premised on the

insufficiency of the evidence that he entered the Hamilton Street residence with intent to be party to the crime of possessing cocaine with intent to deliver. Having found sufficient evidence to support the latter crime, we need not address Sherrod's challenge to the former.

By the Court.—Judgments affirmed.

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