COURT OF APPEALS
DECISION
DATED AND FILED

July 6, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0957-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILL E. EDWARDS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: STANLEY A. MILLER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Will Edwards appeals from a judgment of conviction after a jury found him guilty of one count of bail jumping, contrary to § 946.49, STATS. (1993-94); nine counts of delivery of a controlled substance (cocaine), contrary to §§ 161.16 and 161.41, STATS. (1993-94); and two counts of possession with intent to deliver a controlled substance (cocaine), contrary to

§§ 161.16 and 161.41, STATS. (1993-94).[1] Edwards claims that the trial court erred in denying his suppression motion challenging the stop and arrest that lead to count twenty-two, possession with intent to deliver a controlled substance. He seeks a reversal of all other counts because of the prejudice caused by the admission of the cocaine seized from his automobile at the time of his arrest. He also argues that the trial court erred in failing to give the jury an alibi instruction. Finally, Edwards contends that there was insufficient evidence to convict him on the counts for which he did not receive probation. We affirm.

I. BACKGROUND.

A confidential police informant, known only as "Fleetwood," participated in a series of controlled drug buys involving Edwards in December 1994 and January 1995. The drug buys generally went as follows: a police officer would first search informant Fleetwood to establish that he possessed no drugs; Fleetwood would then enter into a building while being observed by a police officer; the police officer would then observe a man later identified as "Murdock" exit the building a short time afterwards and get into a vehicle registered to Edwards containing only a driver, later identified by Murdock as Edwards. Murdock would then exit the vehicle and re-enter the building. Fleetwood would then exit the building with the purchased cocaine, which he would give to the police officer.

Based upon the controlled buys and surveillance by the investigating officers, on January 6, 1995, Officer Henckel, an officer involved in the

[1] These offenses were sections of the Uniform Controlled Substances Act, which in its current form is embodied in Chapter 961. The current corresponding statutes are §§ 961.16 and 961.41, STATS.

surveillance of one of the controlled buys, went to Edwards's residence to execute a search warrant for his residence and his business. Henckel observed a vehicle leave Edwards's driveway. He decided to follow the vehicle, and subsequently he stopped it. Upon learning that the driver of the vehicle was Edwards, Henckel arrested Edwards for delivery of cocaine based on the several controlled buys observed in the previous months. Once Edwards was arrested, Henckel then searched the vehicle and discovered cocaine, which led to the charge of possession of a controlled substance with intent to deliver.

II. DISCUSSION.

Denial of Edwards's Suppression Motion

When reviewing a trial court's denial of a motion to suppress, "this court will uphold a trial court's findings of fact unless they are against the great weight and clear preponderance of the evidence." ***State v. Richardson***, 156 Wis.2d 128, 137, 456 N.W.2d 830, 833 (1990) (citation omitted). However, whether a search or seizure passes constitutional muster is a question of law we review *de novo*. ***Id.***

The Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution proscribe unreasonable searches and seizures.[2] Our supreme court has "consistently and routinely conformed the law of

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> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

(continued)

search and seizure under the Wisconsin Constitution to the law developed by the United States Supreme Court under the Fourth Amendment." ***State v. Guzman***, 166 Wis.2d 577, 586, 480 N.W.2d 446, 448 (1992).

Edwards contends that Officer Henckel lacked probable cause to stop his vehicle, arrest him and subsequently search his vehicle—a search that resulted in a finding of cocaine leading to a charge of possession with intent to deliver a controlled substance. After a review, we independently conclude that the trial court's factual findings at Edwards's suppression motion hearing were not against the great weight and clear preponderance of the evidence, and further, we independently determine that the stop, arrest and search were constitutional. [3]

"Probable cause requires that, at the moment the arrest was made, the officers had facts and circumstances within their knowledge and of which they had reasonably trustworthy information which are sufficient to warrant a prudent

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[3] Within his argument, Edwards contends that the consolidation of count twenty-two with all other counts was prejudicial because the jury relied upon evidence concerning this count to convict on the other counts. He requests that, if we find the search was unlawful, we reverse the conviction on count twenty-two and all other convictions. Since we find that the search of the vehicle was lawful, we decline to address the issue of consolidation, which, in any event, was insufficiently developed. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300 277 N.W. 663, 665 (1938) (concluding that only dispositive issues need be addressed). *See also* ***Barakat v. DHSS***, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (holding that reviewing court need not address arguments insufficiently developed).

[person] in believing that the person arrested had committed or was committing an offense." ***State v. Drogsvold***, 104 Wis.2d 247, 254, 311 N.W.2d 243, 247 (Ct. App. 1981) (citing ***Beck v. Ohio***, 379 U.S. 89, 91 (1964)). *See also* § 968.24, STATS. (requiring an officer to reasonably suspect a person of having committed or committing a crime to justify a stop). The officers in this case clearly had reason to believe Edwards committed a crime.

Based on Edwards's involvement in the series of controlled buys, the police obtained a search warrant for his home and business and decided to arrest him . When Henckel arrived to execute the search warrant at Edwards's home and to arrest Edwards if he was present, he observed a person leave the home in a vehicle. At this point he had probable cause to stop the vehicle and ask the driver for identification. Under these circumstances, we see no difference between Henckel stopping Edwards's vehicle and stopping Edwards on foot had he exited the house and walked down the street, rather than driven. The decision to arrest Edwards was based the knowledge that each time a controlled buy took place, the reliable informant would obtain the controlled substances from a middleman who always left the home, after placing a phone call, and entering a car registered to Edwards—the identical information that led to the procurement of the search warrant.

Edwards argues that because Henckel did not observe him committing a traffic violation, and because Henckel was not certain that it was Edwards who was driving the vehicle, no probable cause existed to stop the vehicle. Probable cause existed to arrest Edwards before he left the residence and drove away; thus, Edwards need not have committed a traffic violation to prompt the officers to stop him. Further, when Henckel saw what he believed to be Edwards's vehicle leave the driveway of Edwards's residence, and he thought that

the individual driving the vehicle was Edwards, even though he did not see Edwards initially enter the vehicle, he had probable cause to stop the vehicle and determine whether Edwards was the driver. "The quantum of evidence necessary for probable cause to arrest is less than that for guilt but is more than bare suspicion." ***Drogsvold***, 104 Wis.2d at 254, 311 N.W.2d at 247. Here, the officer had more than a "bare suspicion" to follow the car and ultimately arrest Edwards.

Edwards further claims that the arrest was improper because Henckel did not possess personal knowledge of Edwards's alleged crimes, but rather, he relied on the directive of Detective Mischka to arrest Edwards. We note that Henckel participated in one of the controlled buys involving Edwards. Moreover, an arrest is supported by probable cause based on the collective knowledge of the police force. *See* ***State v. Taylor***, 60 Wis.2d 506, 515, 210 N.W.2d 873, 878 (1973) ("[I]n making an arrest without a warrant at the request of another [officer], all reasonable doubts concerning the reasonableness of the information on which the arresting officer acts should be resolved in his [or her] favor."). The collective knowledge of the police implicated Edwards as the drug supplier. Here, Henckel had some personal knowledge of Edwards's drug trafficking, and this knowledge, combined with his reliance on the collective knowledge of the police force, including Detective Mischka, was sufficient to permit Henckel to arrest Edwards.

Since probable cause was established to arrest Edwards, both the stop and the arrest were constitutional. Once stopped and arrested, the search of the vehicle was constitutional as it was a search incident to a valid arrest. *See* ***New York v. Belton***, 453 U.S. 454, 460 (1981); ***State v. Fry***, 131 Wis.2d 153, 180, 388 N.W.2d 565, 577 (1986).

Finally, Edwards argues that the arrest was unconstitutional because it was based on information from an unreliable police informant. Although Edwards contends that the informant was unreliable, the police testified that they regarded the informant, who was a direct participant in the controlled buys, to be highly reliable. Further, the police were able to verify, in their capacity as police officers and as observers, key information given to them by the informant. Moreover, it was the jury's determination that this witness was credible. *See* ***State v. Wyss***, 124 Wis.2d 681, 694, 370 N.W.2d 745, 751 (1985) (asserting that the credibility of witnesses is exclusively for the trier of fact), *overruled on other grounds by* ***State v. Poellinger***, 153 Wis.2d 493, 504-05, 451 N.W.2d 752, 756-57 (1990).

Failure to Give the Jury an Alibi Instruction

Edwards contends that the trial court erred when it refused to give an alibi instruction for two of the drug delivery counts. He claims that trial testimony showed that he was at a different location than that of the scene of the crime when one of the charged offenses took place. With regard to the other charge, he submits that the vehicle the State claimed he used during this delivery was being repaired at the time of the crime and, therefore, he could not have been involved in this crime.

A trial court has broad discretion in determining which instructions to give the jury, *see* ***State v. Turner***, 114 Wis.2d 544, 551, 339 N.W.2d 134, 138 (Ct. App. 1983), and a defendant is entitled to a "theory of defense" instruction only if it is supported by credible evidence. ***State v. Bernal***, 111 Wis.2d 280, 282, 330 N.W.2d 219, 220 (Ct. App. 1983). The test for sufficiency of evidentiary support for a requested jury instruction is whether "a reasonable construction of

the evidence will support the defendant's theory, viewed in the most favorable light it will reasonably admit from the standpoint of the accused." ***State v. Coleman***, 206 Wis.2d 199, 213, 556 N.W.2d 701, 707 (1996) (internal quotation marks omitted) (quoted source omitted). In making the determination whether there is sufficient evidentiary support, "neither the trial court nor the reviewing court may weigh the evidence, but instead may only ask whether a reasonable construction of the evidence, viewed favorably to the defendant, supports the alleged defense." ***Id.*** at 213-14, 556 N.W.2d at 707.

The trial court concluded that no real alibi defense evidence was submitted, and therefore, the request for the instruction was denied. We agree and conclude that a reasonable construction of the evidence does not support an alibi instruction. WIS J I—CRIMINAL 775, entitled "alibi," reads:

> There is evidence in this case that at the time of the commission of the offense charged, the defendant was at a place other than that where the crime occurred.
>
> It is not necessary for the defendant to establish that he was not present at the scene of the crime or that he was at some other place. The burden is upon the State to convince you beyond a reasonable doubt that the defendant committed the offense as charged.

First we note that Edwards's claims did not make it impossible for him to have committed the offenses. Evidence established that a drug delivery occurred on December 20, 1994 between 12:30 and 12:45 p.m. Edwards's time was not accounted for between 12:30 and 12:45 p.m. that day. Edwards's alleged alibi is that records from a recycling company show that Edwards was present at the company between approximately 10:55 a.m. and 11:15 a.m. that same day. Edwards testified that a round trip to the recycling center would take approximately ninety minutes, making a one-way trip take forty-five minutes.

Thus, Edwards could have returned to his business or home by 12:00 p.m. that same day, leaving ample time for him to commit the offense. Thus, the evidence presented by both the defense and the State, on this count, did not support Edwards's contention that he "was at a place other than that where the crime occurred."

On December 28, 1994, when another drug delivery occurred for which Edwards was charged, Edwards claimed his Ford Bronco was being serviced and therefore, he could not have committed this crime. Again, this evidence does not establish an alibi. If true, all it establishes is that Edwards's vehicle was being repaired on the same day that the crime took place. Although the State claims that the Bronco was the vehicle involved in this particular delivery, Edwards did not provide an alibi for himself, only for his vehicle. Obviously, Edwards could have committed the crime in another similar vehicle, or the State's witness who claimed the Bronco was the vehicle used in the crime could have been mistaken. The refusal to give the alibi instruction on the strength of this evidence was proper because Edwards failed to establish that, at the time of the offense, he was elsewhere.

Sufficiency of the Evidence

We will not reverse a conviction on the basis of insufficient evidence "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." ***State v. Poellinger***, 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990).

> If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court

> may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

Id. at 507, 451 N.W.2d at 758.

Edwards challenges the sufficiency of the evidence on eight drug delivery counts and on count twenty-two dealing with the cocaine found in Edwards's car after his arrest. The drug delivery counts revolved around the controlled buys discussed earlier. Edwards argues, in essence, that because neither the informant Fleetwood nor the police ever personally saw Edwards give cocaine to Murdock, that the evidence that he did so was insufficient. In support of this contention, Edwards argues that Murdock, who testified that Edwards gave him the controlled substances, was an incredible witness who used cocaine.

The jury heard testimony from Murdock that Edwards gave him the drugs purchased by Fleetwood. The jury was the sole judge of Murdock's credibility. *See* ***Wyss***, 124 Wis.2d at 694, 370 N.W.2d at 751 (asserting that the credibility of witnesses is exclusively for the trier of fact to assess). Here, the trier of fact "could have drawn the appropriate inferences from the evidence [presented] to find the requisite guilt" and we will not overturn its verdict on that basis as to the drug delivery counts. ***Poellinger***, 153 Wis.2d at 507, 451 N.W.2d at 758. Whether the police or Fleetwood had personal knowledge of Edwards delivering cocaine to Murdock is not a basis on which to find the evidence insufficient.

As to the charge resulting from the discovery of cocaine in Edwards's car at the time of his arrest, Edwards submits that the evidence was insufficient to show knowledge on his part that cocaine was in his vehicle. Edwards provides no factual or legal support for this assertion and we, therefore,

reject this argument as insufficiently developed. *See* ***Barakat v. DHSS***, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (reviewing court need not address "amorphous and insufficiently developed" arguments).

For the reasons stated, we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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