

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 2, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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, STATS.

No. 98-2321-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALVIN HART,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL J. BARRON, Judge. *Affirmed.*

WEDEMEYER, P.J.¹ Alvin Hart appeals from a judgment entered after a jury found him guilty of receiving stolen property and habitual criminality, contrary to §§ 943.34(1)(a), and 939.62, STATS. Hart claims there was insufficient evidence to support the conviction and that § 943.34(1)(a) is unconstitutional.

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

Because the evidence is sufficient to support the conviction and because Hart has not demonstrated that § 943.34(1) is unconstitutional, this court affirms.

I. BACKGROUND

On February 20, 1997, Hart was walking through the parking lot of an apartment complex. Hart was carrying a blanket in the shape of a bundle over his shoulders. Hart was stopped by Richard Lucas, a security guard who patrols the apartment complex. Lucas asked Hart where he was going and what he was carrying in the blanket. Hart responded that he was coming from one of the apartments, but could not identify any residents and that he had his laundry in the blanket. Lucas felt hard objects in the blanket and, when he looked in, Lucas saw a VCR, stereo and compact discs. Lucas asked Hart to come to the security office, where a struggle ensued. When the police arrived, they found Lucas and another security officer physically restraining Hart.

Hart was arrested. The police discovered three Susan B. Anthony dollar coins in Hart's pocket. The police also discovered a handgun in Hart's coat pocket. Erika Kilgore resided at the apartment complex involved here and discovered that her apartment had been burglarized when she arrived home in the early afternoon. She went to the police station where she identified the property that Hart had been carrying as her own. She also stated she did not know Hart, nor had she given anyone permission to enter her apartment.

Hart was charged with four counts: battery, possession of a firearm by a felon, carrying a concealed weapon and receiving/concealing stolen property. The case was tried to a jury. The jury acquitted Hart on the battery count, deadlocked on the possession of a firearm and carrying a concealed weapon counts

and convicted him on the concealing stolen property count. Judgment was entered. Hart now appeals.

II. DISCUSSION

A. *Insufficient Evidence.*

Hart argues that the evidence was insufficient to support the conviction. Specifically, he contends that there was nothing to demonstrate one element of the charge—that he knew the property he was carrying was stolen. This court is limited in its review by the following standard:

[I]n reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. 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.

State v. Poellinger, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990) (citations omitted).

Using this standard, this court concludes that there is sufficient evidence to support the conviction. Hart was charged with concealing stolen property, which requires proof of three elements: (1) the property must be stolen; (2) the defendant concealed the property; and (3) the defendant knew that the property was stolen. *See* § 943.34(1), STATS. Hart challenges only the last element. However, the record contains sufficient evidence to allow a reasonable jury to infer that Hart knew the property he was carrying was stolen. He gave

evasive answers to Lucas about his reasons for being at the apartment complex and lied about the contents of the blanket. He fought with Lucas. This conduct supports a reasonable inference that he knew he was carrying stolen items. These actions do not support the contention that Hart raises in his brief that he believed the items were abandoned. Moreover, the victim's missing Susan B. Anthony coins were discovered in Hart's pocket. These facts are sufficient to support the conviction.

B. Constitutionality.

Hart also claims that the statute under which he was convicted was unconstitutional because it creates a presumption that when someone is moving concealed items, the person knows the property is stolen. This court is not persuaded.

All statutes are presumed constitutional and Hart bears the burden of proving that the statute challenged here is unconstitutional. *See State v. McKenzie*, 151 Wis.2d 775, 779, 446 N.W.2d 77, 78 (Ct. App. 1989). This court reviews constitutional challenges independently. *See State v. Ambrosia*, 208 Wis.2d 269, 273, 560 N.W.2d 555, 557 (Ct. App. 1997).

This court has reviewed the statute that Hart challenges and cannot conclude that the statute creates the presumption Hart suggests. The statute does not say that anyone carrying concealed property is presumed to be doing so with the knowledge that it is stolen. The fact finder determines whether the facts of the case before it demonstrate that the accused is carrying property knowing that it is stolen. The fact finder in this case did not convict Hart based on any presumption and was not instructed that such presumption existed. Rather, the jury believed

that the evidence as a whole demonstrated that Hart knew the property he was carrying was stolen.

Hart has failed to prove that § 943.34(1), STATS., is unconstitutional. Therefore, this court rejects his attack of this statute.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

