

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

September 6, 1995

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.

**NOTICE**

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

No. 95-0769-CR

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TERRANCE T. FLETCHER,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Waukesha County: MARIANNE E. BECKER, Judge. *Affirmed.*

NETTESHEIM, J. Terrance T. Fletcher appeals from a judgment of conviction for selling a dangerous weapon to a child pursuant to § 948.60(2)(b), STATS., 1991-92.<sup>1</sup> On appeal, Fletcher contends that the evidence at the close of the State's case did not establish that he sold the weapon to the

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<sup>1</sup> At the time of the offense in this case, selling a dangerous weapon to a child was a Class A misdemeanor. *See* § 948.60(2)(b), STATS., 1991-92. Presently, the offense is a Class E felony. *See* § 948.60(2)(b), STATS.

child. More specifically, Fletcher contends that the evidence does not establish a physical transfer of possession of the weapon to the child. We reject Fletcher's argument. We affirm the conviction.

Before we set out the facts, we clarify the scope of the evidence which we consider on the appellate issue. When we are asked to review a trial court's ruling on a motion to dismiss at the close of the State's case, we must consider *all* of the evidence presented in the case *if the defendant has proceeded to present evidence* following the court's denial of the motion to dismiss. *State v. Kelley*, 107 Wis.2d 540, 544, 319 N.W.2d 869, 871 (1982). Here, after the trial court denied his motion to dismiss at the close of the State's case, Fletcher proceeded to present evidence in support of his defense. We therefore look to all the evidence in reviewing the trial court's ruling.

In determining whether the evidence was sufficient, we inquire whether the evidence adduced, if believed and rationally considered by the jury, was sufficient to establish the elements of the crime for which the defendant was found guilty. See *State v. Kaufman*, 188 Wis.2d 485, 490, 525 N.W.2d 138, 139 (Ct. App. 1994).

The evidence showed the following. On November 15, 1993, the date of the offense, Fletcher was living with his friend Rick Ronkowski at Ronkowski's home. In a statement to the police, Fletcher admitted that he sold a pistol for \$60 to a minor, then sixteen years of age. The transaction took place in Fletcher's bedroom at the Ronkowski home.

The minor had previously given the police a statement concerning the transaction. A portion of this statement was read to the jury. In his statement, the minor admitted that he had purchased the pistol from Fletcher for \$60. He also stated that he did not take the pistol to his home because he did not want his parents to know about the transaction. In addition, the minor testified at the trial. In his testimony, the minor again admitted the transaction, but added that "I never took it into possession." However, the minor conceded that he took the pistol and placed it in an end table in Ronkowski's bedroom. At another point in his testimony, the minor retreated from this statement, contending that he could not remember if he took the pistol to Ronkowski's room. Later, the minor directed the police to the location of the pistol in Ronkowski's room.<sup>2</sup>

On appeal, Fletcher argues that a physical transfer of the possession of the weapon is necessary to establish a "sale" pursuant § 948.60(2)(b), STATS., 1991-92, and that the evidence we have summarized does not establish such a transfer. We will assume, without deciding, that a sale of a dangerous weapon within the meaning of the statute requires proof of transfer of possession. Nonetheless, we hold that the evidence was sufficient to establish a transfer of the weapon.

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<sup>2</sup> Fletcher also testified at the trial. He contended that the sale was conditional, that the pistol was to remain at Ronkowski's home and that some days later he returned the money to the minor. On appeal, Fletcher does not dispute the jury's obvious rejection of his testimony.

Both Fletcher and the minor admitted that the transaction took place. The only reason the minor did not take the pistol to his home was because he feared his parents would learn about the purchase. Thus, the minor chose to leave the weapon at the Ronkowski home. This evidence alone supports a reasonable inference that Fletcher had transferred and surrendered possession of the pistol to the minor. At a minimum, the evidence established constructive possession of the weapon in the minor. He was then the owner of the weapon with full entitlement to its possession.

Moreover, the minor admitted in his testimony that he placed the pistol in the end table in Ronkowski's room. This constitutes direct evidence of the minor's physical possession, dominion and control of the pistol after the sale was completed. The minor's later testimony that he never took possession of the weapon presented a credibility determination for the jury. The jury, as ultimate arbiter of credibility, has the power to accept one portion of a witness's testimony and reject another portion. *O'Connell v. Schrader*, 145 Wis.2d 554, 557, 427 N.W.2d 152, 153 (Ct. App. 1988). Here, the jury obviously chose to believe that portion of the minor's testimony that he placed the pistol in the end table. The minor's ability to later direct the police to the location of the pistol in Ronkowski's room strongly supports the jury's choice on this question.

We hold that the evidence demonstrated a transfer of the possession of the pistol from Fletcher to the minor.

*By the Court.* – Judgment affirmed.

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