

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 2, 1998

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. 97-0406-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CALVIN GREGORY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
JAMES E. WELKER, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. Calvin Gregory appeals from a judgment convicting him of keeping or maintaining a dwelling for the purpose of manufacturing, keeping or delivering controlled substances. Section 161.42, STATS., 1993-94. Trial was to the court. The issue is whether the court's finding

of guilt was supported by sufficient evidence. We conclude that it was and therefore affirm.

To convict Gregory under § 161.42, STATS., 1993-94,¹ required proof that he knowingly kept or maintained a structure or place that was used for manufacturing, keeping or delivering a controlled substance.² In his appeal Gregory contends that the State did not prove beyond a reasonable doubt that he kept or maintained the house in question because there was no evidence that he managed or controlled it. The parties agree that to “keep or maintain” under the statute requires management or control of the premises. *See* WIS. J.I.—CRIMINAL 6037(B) (1997); *State v. Martinez*, 210 Wis.2d 397, 403-04, 563 N.W.2d 922, 925 (Ct. App. 1997).

The test on review of a guilty verdict is as follows:

The burden of proof is upon the state to prove every essential element of the crime charged beyond reasonable doubt. The test is not whether this court or any of the members thereof are convinced [of the defendant’s guilt] beyond reasonable doubt, but whether this court can conclude the trier of facts could, acting reasonably, be so convinced by evidence it had a right to believe and accept as true The credibility of the witnesses and the weight of the evidence is for the trier of fact. In reviewing the evidence to challenge a finding of fact, we view the evidence in the light most favorable to the finding. Reasonable inferences drawn from the evidence can support a finding of fact and, if more than one reasonable

¹ Section 161.42, STATS., 1993-94, was renumbered as § 961.42, STATS., by 1995 Wis. Act 448, § 267, eff. July 9, 1996.

² Section 161.42(1), STATS., 1993-94, provided that “It is unlawful for any person knowingly to keep or maintain any ... dwelling, ... which is resorted to by persons using controlled substances ... or which is used for manufacturing, keeping or delivering them in violation of this chapter.” The state did not attempt to prove that the house was resorted to by drug offenders.

inference can be drawn from the evidence, the inference which supports the finding is the one that must be adopted.

Bautista v. State, 53 Wis.2d 218, 223, 191 N.W.2d 725, 727-28 (1971).

The court received sufficient evidence to convict Gregory as one who kept or maintained the premises. Gregory points to evidence that another person, Ella Cartwright, leased the house and paid the rent and utilities, that while Gregory was often there repairing cars in the yard, he did not frequent the house at other times, that he did not sleep on the premises, and that police found very little of his personal property and none of his clothes in the house. However, the court also heard testimony that Gregory and Cartwright had a daughter who lived in the house, that Gregory received his mail there, that he gave the house as his address on his bail bond, that there was no evidence that Gregory used any other address, and that he referred in testimony to the address as “home.” Additionally, he operated a car repair business on the premises and the landlord believed he lived there and consulted him rather than Cartwright about cleaning up the yard. Finally, when police executed a search warrant on the premises at 8:30 in the evening, they discovered Gregory in a bedroom of the house with Cartwright and his daughter, and also discovered a briefcase in the room containing Gregory’s billfold, personal papers, and numerous capsules containing heroin residue. That evidence, if believed, creates a reasonable inference that Gregory both lived in the house and managed or controlled what occurred there. Therefore, we affirm.

By the Court.—Judgment affirmed.

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

