COURT OF APPEALS
DECISION
DATED AND FILED

July 23, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1711-CR **Cir. Ct. No. 2010CF5332**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT LADANIEL ROGERS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed*.

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Robert Ladaniel Rogers appeals from a judgment of conviction, entered upon a jury's verdict, on one count of possession of a firearm by a felon. Rogers contends there was insufficient evidence on which to convict him. We disagree and affirm the judgment.

¶2 Rogers was stopped by police because the vehicle he was driving had no front license plate and had a cracked rear brake light. Officers testified that Rogers engaged in furtive movements as they approached, so he was removed from the vehicle. When a detective arrived on scene, he searched Rogers and recovered two rocks believed to be crack cocaine, two twenty-dollar bills, and a cell phone.

¶3 The vehicle was registered to Rogers' girlfriend, Jasma Riley, so police went to her residence to conduct a knock-and-talk investigation. Riley consented to a search of her apartment, and officers found a loaded .25-caliber handgun in a shoebox on a shelf in Riley's closet.

¶4 Later that evening, Rogers was interviewed by police. Detective Brian Stott prepared a written statement from the interview, which had been witnessed by Detective Kevin Klemstein, though Rogers refused to sign the statement. According to the prepared statement, Rogers told police that he lived with his girlfriend, "was holding onto a .25 cal[iber] automatic handgun for his guy[,]" and that "the gun was in a box so the kids couldn't get to it."

¶5 Rogers was charged with possession of a firearm by a felon and possession of cocaine. Shortly before trial, the State dismissed the cocaine charge due, in part, to degradation of the evidence.[1] The trial proceeded on the firearm charge only, and the jury convicted Rogers of the offense.

[1] Rogers had been stopped and originally charged in 2006. The first case was dismissed in 2007—the record in this case does not reveal the reasoning, but electronic docket entries for the case indicate that the State's witness was not available. A second case ended in a mistrial when a detective referred to a confidential informant who had not been previously disclosed to the defense or the court. The current case was filed in November 2010.

¶6 On appeal, Rogers only challenges the sufficiency of the evidence to support the verdict. Specifically, he notes that the only evidence the State presented was that a handgun was found in Riley's apartment, plus the written statement that Rogers refused to sign. Rogers contends that there was no direct evidence of actual or constructive possession and that his "statement" was not sufficiently corroborated.

¶7 Whether there was sufficient evidence to sustain a jury's verdict is a question of law. ***State v. Smith***, 2012 WI 91, ¶24, 342 Wis. 2d 710, 726, 817 N.W.2d 410, 418. The standard is the same regardless of whether the evidence is direct or circumstantial. ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752, 755 (1990). We view the evidence in the light most favorable to the State and the conviction, and we reverse "only where the evidence 'is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.'" ***Smith***, 2012 WI 91, ¶24, 342 Wis. 2d at 726, 817 N.W.2d at 418 (citation omitted).[2]

¶8 To prove possession of a firearm by a felon, as proscribed by WIS. STAT. § 941.29(2)(a), the State must show that (1) the defendant was previously convicted of a felony, and (2) the defendant possessed a firearm.[3] *See* ***State v. Black***, 2001 WI 31, ¶18, 242 Wis. 2d 126, 142, 624 N.W.2d 363, 371. For the

[2] In his brief, Rogers contends that circumstantial evidence must be sufficiently strong to exclude every reasonable theory of innocence. This contention, however, has been rejected. *See* ***State v. Smith***, 2012 WI 91, ¶31, 342 Wis. 2d 710, 728–729, 817 N.W.2d 410, 419. "[F]or purposes of appellate review, 'the trier of fact is free to choose among conflicting inferences of the evidence and may, within the bounds of reason, reject that inference which is consistent with the innocence of the accused.'" ***Id.***, ¶31, 342 Wis. 2d at 729, 817 N.W.2d at 419 (quoting ***State v. Poellinger***, 153 Wis. 2d 493, 506, 451 N.W.2d 752, 757 (1990) (emphasis omitted)).

[3] It is undisputed that Rogers was previously convicted of a felony.

defendant to have "possessed" a firearm, he must have "'knowingly had actual physical control'" of it. *See* ***id.***, ¶19, 242 Wis. 2d at 142, 624 N.W.2d at 371 (citation omitted).

¶9 "A conviction will not stand on the basis of a defendant's confession alone." ***State v. Bannister***, 2007 WI 86, ¶23, 302 Wis. 2d 158, 168, 734 N.W.2d 892, 897. Rather, the State must corroborate at least one "significant fact" from the statement. *See* ***id.***, ¶26, 302 Wis. 2d at 169, 734 N.W.2d at 897; *see also* ***Larson v. State***, 86 Wis. 2d 189, 198, 271 N.W.2d 647, 651–652 (1978). "A significant fact is one that gives confidence that the crime the defendant confessed to actually occur[red]." ***Bannister***, 2007 WI 86, ¶31, 302 Wis. 2d at 171–172, 734 N.W.2d at 899. A challenge to the sufficiency of the corroboration is a challenge to the sufficiency of the evidence. ***Id.***, ¶32, 302 Wis. 2d at 172, 734 N.W.2d at 899.

¶10 After the jury returned its verdict, Rogers moved for judgment notwithstanding the verdict, arguing, among other things, that there was insufficient corroboration of his statement. The circuit court denied the motion, concluding that two points had been corroborated. First, Rogers told police he lived with his girlfriend in an apartment at a particular address. That is the address where Riley opened the door when police started their knock-and-talk. Officers also testified that they had observed Rogers leaving the apartment building, though not the specific apartment. The circuit court concluded that a woman answering the door at the apartment where he said he lived, coupled with observations of Rogers leaving the building, corroborated that detail. The circuit court also concluded that recovering the handgun in a box, as Rogers had indicated, corroborated that fact as well.

¶11 We agree with the circuit court that the facts discovered by police sufficiently corroborated Rogers' purported statement.[4] Both facts are significant facts that give confidence that the crime to which Rogers confessed actually was committed: confirming his residence gives confidence that Rogers had control of the area where the gun was found, and information about the container in which the gun was found gives confidence that Rogers actually controlled it as described in the statement.

¶12 Having concluded that the statement was sufficiently corroborated, the remaining challenges that Rogers raises on appeal—like the absence of fingerprints and DNA on the weapon and Rogers' refusal to sign the written statement—go simply to the weight of the evidence and logical conclusions to be drawn form that evidence, not the admissibility of it.

¶13 If the jury believed that Rogers gave the statement to police and that it was accurately relayed by Detective Stott, then the jury could reasonably conclude that Rogers took possession of the handgun and placed it in the closet. Even if that is *all* the jury believed, there is still sufficient evidence to support the conviction. Possession of a firearm by a felon is a strict liability crime with no intent or temporal elements. *See* ***Black***, 2001 WI 31, ¶19, 242 Wis. 2d at 142, 624 N.W.2d at 371. Thus, if the jury believed that Rogers' statement was legitimate, it had sufficient evidence from the statement on which to convict him.

[4] Police also corroborated the caliber of the weapon as described in Rogers' statement.

By the Court.—Judgment affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.