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DISTRICT II

April 16, 2025

To:

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Circuit Court Judge
Electronic Notice

Gregory Bates
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Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Kathleen E. Wood
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You are hereby notified that the Court has entered the following opinion and order:

2024AP968-CR

State of Wisconsin v. Peter C. Yao (L. C. #2020CF634)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Peter C. Yao appeals from a judgment of conviction for two counts of possession of controlled substances, contending that the State introduced insufficient evidence at his jury trial to convict him of these offenses. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ The evidence at trial was sufficient to support the jury verdict. We therefore affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

The State charged Yao with possession of methamphetamine contrary to WIS. STAT. § 961.41(3g)(g) and possession of narcotic drugs contrary to § 961.41(3g)(am). He was found guilty by a jury after a trial. On appeal, he contends that the evidence was insufficient to show that he had knowledge that he was in possession of the controlled substances.² We reject Yao's challenge.

At Yao's jury trial, Officer Anthony Jenkins testified that he was on patrol when he observed Yao and a female talking by a car in the parking lot of an adult store at approximately 11:00 p.m. Based on the short interaction, the location, and the time of night, Jenkins suspected a drug transaction had taken place.

Yao drove away and Jenkins and another officer initiated a traffic stop. Upon coming to a stop, Yao immediately got out of his vehicle, and the other officer instructed him to return to his car. Yao "[i]nitially ... seemed consensual" when Jenkins asked to search his vehicle, but then said that he needed a warrant. When Jenkins informed Yao he would be searching his person, Yao objected, claiming he had already been searched.³ (Jenkins had already conducted a brief pat-down search of Yao for weapons.) Jenkins unzipped Yao's jacket and found an envelope containing what appeared to be drugs in one of the jacket's interior pockets. Yao stated that he had found the envelope in the parking lot of the adult store and did not know its contents.

² The "possession of a controlled substance requires 'both knowledge and control.'" *State v. Chentis*, 2022 WI App 4, ¶9, 400 Wis. 2d 441, 969 N.W.2d 482 (2021) (citation omitted). The jury was instructed: "You cannot look into a person's mind to determine knowledge or belief. Knowledge or belief must be found, if found at all, from the defendant's acts, words, statements, if any, and from all the facts and circumstances in this case bearing upon knowledge or belief."

³ Because Yao does not challenge the stop or the search of his person, we need not address other facts relevant to those events.

The envelope was “neatly folded, not crumpled up,” and did not appear to have been thrown on the ground. The weather that evening was cold and windy. Yao stipulated that the drugs were morphine sulfate and methamphetamine.

Yao testified and denied being at the adult store parking lot with a female. He testified to seeing “an envelope sitting in the parking lot, ... pick[ing] it up, and ... [not doing] anything but just [putting it in his pocket] ... and [leaving]. [He] didn’t think it was anything important so [he] didn’t look in [it].”

When Yao testified that he placed the envelope in the outside pocket of his jacket, the State reminded Yao of the video it had played showing Jenkins reaching into Yao’s interior pocket and retrieving the envelope. Yao acknowledged he had five prior convictions. The jury found Yao guilty. Yao moved for judgment notwithstanding the verdicts, which the trial court denied and entered judgment on the verdicts.

Yao has a heavy burden in attempting to set aside the jury’s verdicts because our rules for review strongly favor sustaining them. See *State v. Beamon*, 2013 WI 47, ¶21, 347 Wis. 2d 559, 830 N.W.2d 681; *State v. Allbaugh*, 148 Wis. 2d 807, 808-09, 436 N.W.2d 898 (Ct. App. 1989). We must view the evidence in a light most favorable to the State, and we may reverse only if the evidence “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 (1990). We “must accept and follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law.” *Id.* at 507.

Yao cannot meet his burden. In essence, Yao challenges the jury's rejection of his account that he picked up a neatly folded envelope in a parking lot that happened to have controlled substances in it and put it in his inside jacket pocket without looking at the contents. "The [jury] is the sole arbiter of the credibility of witnesses and [it] alone is charged with the duty of weighing the evidence." *State v. Below*, 2011 WI App 64, ¶4, 333 Wis. 2d 690, 799 N.W.2d 95. It is the jury's function to "resolve conflicts in the testimony ... and to draw reasonable inferences from basic facts to ultimate facts." *Poellinger*, 153 Wis. 2d at 506. We cannot "replace[] the trier of fact's overall evaluation of the evidence with [our] own." *See id.*

Here, the jury heard that Yao sought to resist the officer's search of his person and that the envelope containing controlled substances was neatly folded, showed no sign that it had been on the ground, and was found in Yao's inside jacket pocket. Contrary to Yao's argument that the jury had to speculate to determine that he knew the envelope contained controlled substances, the jury was presented with Yao's acts, words, statements, and the facts and circumstances showing that he possessed controlled substances in his pocket. The jury's verdicts reflect its conclusion that Yao's account was not credible and that he knew the envelope contained controlled substances. We must simply determine whether evidence from which a reasonable jury *could* infer the requisite guilt was introduced. *See id.* at 507. It clearly was here, and thus Yao's challenge fails.

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals