

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

December 17, 1996

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.

**NOTICE**

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

**No. 96-2394-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**State of Wisconsin,**

**Plaintiff-Respondent,**

**v.**

**Jeffrey Lelinski,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed.*

SCHUDSON, J.<sup>1</sup> Jeffrey Lelinski appeals from the judgment of conviction, following a jury trial, for disorderly conduct while armed. He also appeals from the trial court order denying his motion for postconviction relief. He argues that the evidence failed to prove venue beyond a reasonable doubt. This court affirms.

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

The evidence relevant to resolution of this appeal is undisputed. On December 8, 1993, City of Milwaukee police officers responded to a Brinks residential alarm at 3373 South 19th Street where they were advised that the house belonged Lelinski, a fellow Milwaukee police officer. While standing outside the house, they heard a gunshot. They entered the residence and retrieved a Glock, a semi-automatic weapon issued to Milwaukee police officers. They encountered Lelinski in the home; he appeared despondent, upset, and intoxicated. Police investigation revealed several gunshot holes through the kitchen window screen, a bedroom window, and the garage. Lelinski acknowledged that he had been suffering serious personal problems and had planned to commit suicide that night. He admitted firing the gun.

Although several witnesses testified that the incident occurred at 3373 South 19th Street, none stated that this address was in the city and county of Milwaukee, state of Wisconsin. Lelinski argues, therefore, that the State did not prove venue beyond a reasonable doubt.

Section 971.19(1), STATS., states in relevant part, “[c]riminal actions shall be tried in the county where the crime was committed.” The State has the burden to prove venue beyond a reasonable doubt. *State v. Mattes*, 175 Wis.2d 572, 576, 499 N.W.2d 711, 713 (Ct. App. 1993). Venue, however, may be established by circumstantial evidence. *Smazal v. State*, 31 Wis.2d 360, 363, 142 N.W.2d 808, 809 (1966). In this case, the circumstantial evidence of venue was overwhelming.

A detective, two sergeants, and two officers testified that they were on duty and employed by the City of Milwaukee Police Department when they were at 3373 South 19th Street on December 8, 1993. One of the officers also testified that Lelinski was conveyed to the Milwaukee County Mental Health Center. A firearm expert testified that he is employed by the State of Wisconsin “here in Milwaukee,” and that the Glock was a gun issued by the Milwaukee Police Department. Lelinski testified that he believed he “had only been discharging a weapon in the city limits, which is a violation of city ordinance.”

No evidence suggested in any way that the crime occurred anywhere but within the jurisdiction of City of Milwaukee police. Venue was

never questioned; it was not at issue in the trial. From the circumstantial evidence at the trial, a jury could only conclude that 3373 South 19th Street was located in the city and county of Milwaukee, state of Wisconsin.

*By the Court.* – Judgment and order affirmed.

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