COURT OF APPEALS
DECISION
DATED AND FILED

April 2, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2440 **Cir. Ct. No. 2007JV119**

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

IN THE INTEREST OF CAPRICE S. I., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

CAPRICE S. I.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County: FAYE M. FLANCHER, Judge. *Reversed*.

¶1 ANDERSON, P.J.[1] Caprice S. I. challenges her conviction for carrying a concealed weapon in violation of WIS. STAT. § 941.23. She contends that she did not go armed with a concealed and dangerous weapon. The undisputed facts of this case establish that a dangerous weapon, a padlock with a shoestring attached, was concealed in the pocket of a coat in a locker secured by a functioning padlock. We reverse Caprice's conviction because under these facts, the weapon was not readily accessible to her.

¶2 The operative facts that drive this opinion are undisputed. While conducting a consensual search of Caprice's school locker, a police officer found a silver padlock with a shoestring attached in a pocket of a coat hanging in the locker. In order to enter the locker, the police officer obtained from Caprice the combination of the padlock securing the locker. Based upon these facts, Caprice was charged with carrying a concealed weapon in violation of WIS. STAT. § 941.23, which provides, "Any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor."

¶3 Whether these undisputed facts are sufficient to support a finding that Caprice was armed with a concealed and dangerous weapon is a question of statutory construction. Questions of statutory construction or the application of a statute to undisputed facts are questions of law on which we do not defer to the circuit court. ***Truttschel v. Martin***, 208 Wis. 2d 361, 364-65, 560 N.W.2d 315 (Ct. App. 1997).

[1] This appeal is decided by one judge pursuant to Wis. Stat. § 752.31(2)(e) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶4 There are three elements to WIS. STAT. § 941.23:

1. The defendant went armed with a dangerous weapon.
2. The defendant was aware of the presence of the weapon.
3. The weapon was concealed.

WIS JI—CRIMINAL 1335. Caprice does not dispute that there is sufficient evidence to support a finding on the second and third elements. The issue is whether she "went armed with a dangerous weapon." As has been the law in Wisconsin for more than seventy-five years, *see* ***State v. Hamdan***, 2003 WI 113, ¶21, 264 Wis. 2d 433, 665 N.W.2d 785, and as the jury instruction explains, "The phrase 'went armed' means that the weapon must have been either on the defendant's person or that the weapon must have been within the defendant's reach." WIS JI—CRIMINAL 1335.

¶5 The question we address is whether Caprice "went armed" with the padlock and shoestring weapon when it was in a coat pocket in a locker secured by a second padlock. The general rule is:

> A charge of carrying a concealed weapon does not require that possession of a weapon be established, only that the defendant carry the weapon. For this purpose the term "carrying" is defined as wearing, bearing or carrying them upon person or in clothing or in pocket for purpose of use or for purpose of being armed and ready for offensive or defensive action in case of conflict with another person.

94 C.J.S. *Weapons* § 21 (footnote omitted).

¶6 Wisconsin bases its CCW (carrying a concealed weapon) law on this rationale:

> The reason for these statutes, it has been said, is "because persons becoming suddenly angered and having such a weapon in their pocket, would be likely to use it, which in

> their sober moments they would not have done, and which could not have been done had not the weapon been upon their person."
>
> In short, carrying a concealed weapon permits a person to act violently on impulse, whether from anger or fear, and that is a prospect the law may discourage.

Hamdan, 264 Wis. 2d 433, ¶54 (citations omitted).

¶7 Wisconsin's CCW statute is not applied literally. "A statute created to prevent the carrying of a concealed weapon on the body of a person is naturally extended to the area inside an automobile in which a person may reach a concealed or hidden weapon." ***Walls***, 190 Wis. 2d at 71. Logically, this extension of the general rule should be applied to any area, not just an automobile, where a concealed or hidden weapon is within reach of an individual.

¶8 Our brief answer to the question of whether Caprice "went armed" under the facts of this case is: No. The weapon was not on her person or within her reach. The weapon was not readily accessible in a moment of anger or fear; rather, the only way to access the weapon would be to go to the locker; use a combination to open the padlock securing the locker and reach into the correct coat pocket to get possession of the weapon.

¶9 The State argues that it need not prove Caprice "went armed" with a concealed and dangerous weapon at the specific time the police officer found the padlock and shoestring. The State contends that at some time on the day the

padlock was found it had to prove Caprice "had the [pad]lock, that she concealed it and that she intended to use it as a dangerous weapon."[2]

¶10 The State would be right if it was a reasonable inference that the only way the padlock and shoestring could have gotten into the locker was for Caprice to physically carry the item from outside of the school, into the school and, ultimately, into her locker. However, in the environment of a high school, this is not a reasonable inference. First, the evidence established that there are padlocks on all storage lockers and additional padlocks for gym lockers. Second, in an environment where the footwear of choice is sneakers there would be thousands of shoestrings in the high school. This is not the case of a gun or knife being found in a locker of a school with a "zero tolerance" policy, where a reasonable inference would be the only way a gun or knife could end up in a locker was if it was carried into the school.

¶11 Under the facts of this case, the padlock and shoestring were not readily accessible to Caprice, and we conclude that she did not go armed with a concealed and dangerous weapon. Therefore, we reverse Caprice's conviction for carrying a concealed weapon in violation of WIS. STAT. § 941.23.[3]

By the Court.—Order reversed.

---

[2] While the State seems to argue that the padlock, sans shoestring, was the weapon, we will give it the benefit of the doubt and assume it meant to argue that it only need prove that sometime on the day in question, Caprice brought the *padlock and shoestring* to her locker and secreted it there with the intent to use it as a weapon.

[3] We do not address Caprice's claimed evidentiary errors, as cases should be decided on the narrowest grounds possible. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989). If a decision on one point disposes of the appeal, we will not decide the other issues raised. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938).

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