COURT OF APPEALS
DECISION
DATED AND FILED

October 14, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-0369-CR **Cir. Ct. No. 01CF006017**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY L. CANFIELD,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Anthony L. Canfield appeals from a judgment entered on a jury verdict convicting him of one count of possession of five grams or fewer of cocaine with intent to deliver. *See* WIS. STAT. § 961.41(1m)(cm)1

(2001–2002).[1] He also appeals from an order denying his postconviction motion for a new trial. Canfield alleges that: (1) the trial court erroneously exercised its discretion when it allowed a police officer to testify as an expert witness; and (2) the evidence was insufficient to support the jury verdict. We affirm.

I.

¶2 Anthony L. Canfield was charged with the possession of cocaine with the intent to deliver it. He pled not guilty and went to trial. At trial, Detective Scott Marlock testified that, on November 9, 2001, he and two police officers drove to the 300 block of North 34th Street in Milwaukee to investigate complaints of "street-level" drug dealing. According to Marlock, as the officers turned onto 34th Street, they noticed a group of seven people standing on the sidewalk. Marlock testified that when they pulled up, the people began to scatter. Marlock focused his attention on a man, whom he identified at trial as Canfield. Marlock testified that, as Canfield walked away, he saw Canfield throw a white "wadded-up" piece of paper over a fence.

¶3 Marlock testified that he got out of his car and retrieved the paper. According to Marlock, when he looked inside, he saw what he suspected were fifteen "corner cuts" of cocaine base.[2] Marlock testified that corner cuts are a common way to package cocaine for sale and that, in his opinion, the packaging "was consistent with somebody dealing the drugs":

> They drop the cocaine base into the corner of the plastic sandwich bag. They tie it around and knot it off at

[1] All references to the Wisconsin Statutes are to the 2001–2002 version unless otherwise noted.

[2] At trial, Canfield stipulated that the paper contained 1.712 grams of cocaine base.

> the end, and then they'll cut it off right above the knot, and each of these consist of one corner cut that contains the drugs, and in that piece of paper, I found 15 corner cuts. Would mean 15 of these small, wadded-up pieces.

The officers arrested Canfield and searched him. According to Marlock, they did not find any signs of drug use, such as a pipe or a lighter, on Canfield.

¶4 Marlock also testified about his experience with drug investigations. At the time of the trial, Marlock had been with the Milwaukee Police Department for approximately ten years. He testified that, during his first eight years, he was involved in drug arrests as an officer in the vice-control division. Marlock was then transferred to the prostitution and gambling unit of the vice-control division. According to Marlock, he was still involved in drug arrests because "[p]rostitutes are commonly known to be connected with drugs, drug usage, and taking people to get drugs."

¶5 About one year before the trial, Marlock was promoted to the Rapid Enforcement of Drug Offenders unit of the vice-control division. When the State asked him about his experience with "drug usage," he estimated that he had been "involved" in approximately 600 to 700 drug arrests and that he made 10 to 15 drug arrests in an average week. According to Marlock, 75 to 80 percent of those arrests involved crack cocaine.

¶6 Marlock testified that his job duties also included interviewing people who "use[] and sell[] crack cocaine." According to Marlock, crack-cocaine users commonly smoke the cocaine using a glass or metal pipe. He testified that, in his experience, drug users usually carry their pipes with them and have burn marks on their fingers and lips from the pipe.

¶7 As noted, a jury found Canfield guilty of one count of possession of five grams of cocaine or fewer with intent to deliver. The trial court sentenced him to seventy-six months of confinement with forty months of initial confinement and thirty-six months of extended supervision.

II.

A. Expert Opinion Testimony

¶8 First, Canfield alleges that the trial court erroneously exercised its discretion when it allowed Marlock to testify as an expert witness on the practices of drug dealers and drug users. A witness qualifies as an expert "by knowledge, skill, experience, training, or education." WIS. STAT. RULE 907.02.[3] Whether a witness is qualified to give an expert opinion is within the trial court's discretion. ***Simpsen v. Madison Gen. Hosp. Ass'n***, 48 Wis. 2d 498, 509, 180 N.W.2d 586, 592 (1970). We will affirm a discretionary determination if it appears from the record that the trial court: (1) examined the relevant facts; (2) applied a proper standard of law; and (3) using a demonstrative rational process, reached a conclusion that a reasonable judge could reach. ***Loy v. Bunderson***, 107 Wis. 2d 400, 414–415, 320 N.W.2d 175, 184 (1982).

[3] WISCONSIN STAT. RULE 907.02 provides:

> **Testimony by experts.** If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

¶9 Canfield does not dispute that an expert witness can be qualified by experience. He claims, however, that Marlock's experience with drug use was insufficient to qualify him as an expert. Specifically, Canfield challenges the following testimony:

> Q. Based on the 15 corner cuts that's – little rocks of crack cocaine weighing approximately 1.7 grams, do you have an opinion whether that packaged the way it is is consistent with what a drug user would have for personal use?
>
> [CANFIELD'S ATTORNEY]: I object. I don't think the necessary foundation has been established to qualify him as an expert to give an opinion.
>
> JUDGE MANIAN: Overruled.
>
> [MARLOCK]: No. I [would] say that was consistent with somebody dealing the drugs.

¶10 The record establishes that Marlock was qualified by his experience to give an opinion on whether the cocaine Canfield possessed was for personal use. At the time of the trial, Marlock had been employed by the Milwaukee Police Department for approximately ten years and his experience as an officer included hundreds of drug arrests. Moreover, at the time of the trial, Marlock had been with the Rapid Enforcement of Drug Offenders unit for approximately one year. During that time, he performed approximately ten to fifteen drug arrests per week. Most significantly, Marlock testified that he had arrested and interviewed drug users, as well as drug dealers. Through this experience, he gained sufficient specialized knowledge of the characteristics of drug users and drug dealers. The trial court did not erroneously exercise its discretion when it held that Marlock's

experience was sufficient to qualify him as an expert.[4] *See* ***State v. Williams***, 168 Wis. 2d 970, 990–991, 485 N.W.2d 42, 50 (1992) (officer's testimony on illegal sale of drugs was expert opinion testimony based on officer's specialized knowledge obtained as a narcotics officer), *overruled on other grounds by* ***State v. Stevens***, 181 Wis. 2d 410, 511 N.W.2d 591 (1994).

B. Suficiency of the Evidence

¶11 Second, Canfield alleges that the evidence was insufficient to support his conviction. When reviewing the sufficiency of the evidence, we will reverse a conviction only if "the evidence, viewed most favorably to the state and the conviction, 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, 755 (1990). The jury, not a reviewing court, determines the credibility of witnesses and the weight of their testimony, ***Whitaker v. State***, 83 Wis. 2d 368, 377, 265 N.W.2d 575, 580 (1978), and resolves any conflicts in the evidence, ***State v. Daniels***, 117 Wis. 2d 9, 18, 343 N.W.2d 411, 416 (Ct. App. 1983).

¶12 A conviction for the possession of cocaine with intent to deliver requires the State to prove that: (1) the defendant possessed a controlled substance; (2) the substance was cocaine; (3) the defendant knew or believed that the substance was cocaine; and (4) the defendant intended to deliver cocaine. WIS

[4] Although the trial court did not make an explicit finding of fact on this issue, it implicitly found that Marlock was qualified to testify when it denied Canfield's attorney's objection to Marlock's qualifications. *See* ***Schneller v. St. Mary's Hosp.***, 162 Wis. 2d 296, 311–312, 470 N.W.2d 873, 878–879 (1991) (a trial court's finding of fact may be implicit from its ruling).

JI—CRIMINAL 6035. Canfield does not dispute that there was enough evidence to establish the first three elements. He contends, however, that the evidence was insufficient to show that he intended to deliver the cocaine. We disagree.

¶13 Canfield's intent to sell can be inferred from the manner of the packaging and the general circumstances, including the facts that: (1) the officers did not find any drug paraphernalia, such as a lighter or a pipe, suggestive of personal use; and (2) the police apprehended Canfield in an area known for drug transactions. Moreover, as noted, Marlock testified that the circumstances were consistent with the intent to sell cocaine. A jury could reasonably infer from this evidence that Canfield intended to sell, rather than use, the cocaine. *See* ***State v. Johnson***, 2001 WI App 105, ¶24, 244 Wis. 2d 164, 628 N.W.2d 431 ("numerous separately wrapped baggies of crack … constitute evidence that supports intent to sell"); ***Kidd v. Commonwealth***, 565 S.E.2d 337, 344–345 (Va. Ct. App. 2002) (absence of drug paraphernalia and area in which accused was arrested are relevant factors in determining intent to deliver).

By the Court.—Judgment and order affirmed.

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