

FILED
04-12-2023
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
C O U R T O F A P P E A L S
D I S T R I C T I I I

Case No. 2022AP1927-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

KELSY R. WOOLDRIDGE,
Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN BARRON COUNTY, THE HONORABLE
MAUREEN D. BOYLE, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

JOSHUA L. KAUL
Attorney General of Wisconsin

SONYA K. BICE
Assistant Attorney General
State Bar #1058115

WILFREDO NAJARRO
Law Student

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3935
(608) 294-2907 (Fax)
bicesk@doj.state.wi.us

TABLE OF CONTENTS

ISSUE PRESENTED.....	4
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	4
INTRODUCTION	4
STATEMENT OF THE CASE	4
STANDARD OF REVIEW.....	6
ARGUMENT	6
The evidence was sufficient to convict Wooldridge of possession of methamphetamine.....	6
A. This Court will deny an insufficient evidence claim if the verdict is based on the jury’s reasonable inferences supported by the evidence, including credibility determinations.	6
B. The jury reasonably inferred, based on the evidence, credibility determinations, and proper inferences, that Wooldridge knowingly possessed methamphetamine.....	9
C. Wooldridge’s argument in support of her insufficient evidence claim is unavailing.....	11
CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<i>Kabat v. State</i> , 76 Wis. 2d 224, 251 N.W.2d 38 (1977)	11, 12, 13
<i>State v. Alles</i> , 106 Wis. 2d 368, 316 N.W.2d 378 (1982)	7

<i>State v. Bodoh</i> , 226 Wis. 2d 718, 595 N.W.2d 330 (1999)	8
<i>State v. Harris</i> , 190 Wis. 2d 718, 528 N.W.2d 7 (Ct. App. 1994).....	7
<i>State v. King</i> , 187 Wis. 2d 548, 523 N.W.2d 159 (Ct. App. 1994).....	10
<i>State v. Kreuser</i> , 91 Wis. 2d 242, 280 N.W.2d 270 (1979)	8, 9
<i>State v. Messelt</i> , 185 Wis. 2d 254, 518 N.W.2d 232 (1994)	8
<i>State v. Perkins</i> , 2004 WI App 213, 277 Wis. 2d 243, 689 N.W.2d 684	7
<i>State v. Poellinger</i> , 153 Wis. 2d 493, 451 N.W.2d 752 (1990)	7, <i>passim</i>
<i>State v. Routon</i> , 2007 WI App 178, 304 Wis. 2d 480, 736 N.W.2d 530	8
<i>State v. Sartin</i> , 200 Wis. 2d 47, 546 N.W.2d 449 (1996)	7
<i>State v. Smith</i> , 2012 WI 91, 342 Wis. 2d 710, 817 N.W.2d 410.....	6, 7
<i>State v. Wenk</i> , 2001 WI App 268, 248 Wis. 2d 714, 637 N.W.2d 417	8
Statutes	
Wis. Stat. § 961.41(3g)(g).....	6
Other Authorities	
Wis. JI–Criminal 6030 (2016)	7

ISSUE PRESENTED

Was there sufficient evidence to convict Defendant-Appellant Kelsy R. Wooldridge of possession of methamphetamine?

The circuit court answered yes.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request either.

INTRODUCTION

After police discovered methamphetamine residue in a bloody syringe in Wooldridge's purse, she was charged with possession of methamphetamine and convicted after a jury trial. Wooldridge argues that there was insufficient evidence to support the guilty verdict. Specifically, she argues that the evidence did not support the jury's determination that she knew that the syringe contained methamphetamine.

The jury heard testimony that Wooldridge nodded when the arresting officer told her he found the bloody syringe, and she told him that she had used methamphetamine about a week earlier. After hearing all the evidence, the jury properly made credibility determinations and reasonably inferred that Wooldridge knew that the methamphetamine residue was in the syringe. It found her guilty of knowingly possessing methamphetamine. This Court should affirm.

STATEMENT OF THE CASE

The traffic stop, search, and discovery of the syringe. The State charged Wooldridge with possession of methamphetamine. (R. 9:1.) Officer Sawyer Prinsen testified at trial that he conducted a traffic stop of a car in which Wooldridge was a passenger; the car was registered to her. (R.

47:82–84, 85.) Wooldridge consented to a search. (R. 47:96.) Officer Prinsen testified as follows:

- he found a syringe in Wooldridge’s purse that “had a bloody substance inside the tube and on the point of the needle”;
- he walked over to Wooldridge and showed her the syringe and told her he found it in her purse, and she nodded;
- he asked her if she had used methamphetamine, and she “acknowledged that she did”; and
- she told him the most recent time she had used methamphetamine was “[a]pproximately one week prior to that contact with her.”

(R. 47:86–88.)

On cross-examination, defense counsel asked the officer whether he “ask[ed] [Wooldridge] if she knew what was in that needle” and whether he asked her “if she had put that needle there.” (R. 47:98.) He answered that he did not. (R. 47:98.)

The State presented the testimony of a second officer who sent the syringe for analysis (R. 47:105) and the testimony of the crime lab analyst who identified the substance in the syringe as methamphetamine (R. 47:123).

Jury instructions, verdict, and appeal. The court instructed the jury on the elements of possession of methamphetamine that the State was required to prove: that Wooldridge possessed and had actual physical control of the substance, that the substance was methamphetamine, and that she knew or believed that the substance was methamphetamine. (R. 47:142.) The court also instructed the jury that it “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 or statements, if any, and from all the facts and circumstances in this case

bearing upon knowledge or belief.” (R. 47:142–43.) The court instructed the jury that in weighing the evidence, it “may take into account matters of your common knowledge and your observations and experience in the affairs of life”; that the jury’s duty was “to scrutinize and to weigh the testimony of the witnesses and to determine the effect of the evidence as a whole”; and that the jury was “the sole judge[] of the credibility” or “believability of the witnesses and of the weight to be given to their testimony.” (R. 47:145.)

The jury found Wooldridge guilty of possession of methamphetamine. (R. 30; 47:164–65.) The court withheld sentence and placed Wooldridge on probation for one year. (R. 28.)

Wooldridge appeals from the judgment of conviction. (R. 59.)

STANDARD OF REVIEW

Whether evidence was sufficient to sustain a jury’s verdict is a question of law reviewed independently. *State v. Smith*, 2012 WI 91, ¶ 24, 342 Wis. 2d 710, 817 N.W.2d 410.

ARGUMENT

The evidence was sufficient to convict Wooldridge of possession of methamphetamine.

A. This Court will deny an insufficient evidence claim if the verdict is based on the jury’s reasonable inferences supported by the evidence, including credibility determinations.

In order to prove that Wooldridge was guilty of violating Wis. Stat. § 961.41(3g)(g), the State had to prove beyond a reasonable doubt that: (1) Wooldridge possessed the substance; (2) the substance was a controlled substance whose possession is prohibited by law; and (3) Wooldridge knew or

believed that the substance was a controlled substance. *See State v. Harris*, 190 Wis. 2d 718, 723, 528 N.W.2d 7 (Ct. App. 1994); Wis. JI–Criminal 6030 (2016).

To prove that Wooldridge knew or believed the substance in the syringe in her purse was methamphetamine, the State had to present sufficient evidence that Wooldridge knew or believed the substance in the syringe was methamphetamine, but was not required to prove that she knew the exact nature or precise chemical identity of the substance. *See State v. Sartin*, 200 Wis. 2d 47, 61–62, 546 N.W.2d 449 (1996).

When reviewing the sufficiency of the evidence, this Court considers the evidence “in the light most favorable to the State and reverse[s] the conviction 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*, 342 Wis. 2d 710, ¶ 24 (quoting *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990)). This Court must affirm “if there is any reasonable hypothesis” of guilt and if the verdict is based on “a reasonable inference drawn from the evidence.” *Smith*, 342 Wis. 2d 710, ¶¶ 24, 33. If more than one inference can be drawn, this Court must follow the inference supporting the verdict unless the evidence was incredible as a matter of law. *State v. Alles*, 106 Wis. 2d 368, 376–77, 316 N.W.2d 378 (1982).

This deferential test is the same regardless of whether the evidence is direct or circumstantial. *Poellinger*, 153 Wis. 2d at 501. On appeal, this Court need not be convinced of guilt, but must determine whether the jury could reasonably have been convinced beyond a reasonable doubt by the evidence it had a right to believe and accept as true. *Id.* at 503–04; *State v. Perkins*, 2004 WI App 213, ¶ 14, 277 Wis. 2d 243, 689 N.W.2d 684. A properly instructed jury may find the defendant guilty based on circumstantial evidence that is sufficient to sustain the verdict, regardless of whether the

evidence may support other theories of the crime. *Poellinger*, 153 Wis. 2d at 507–508.

The jury can draw inferences using common knowledge and common sense. *State v. Messelt*, 185 Wis. 2d 254, 264, 518 N.W.2d 232 (1994); *Poellinger*, 153 Wis. 2d at 504, 508. The jury can choose among conflicting inferences that may be supported by the same evidence, and can adopt the inference that is consistent with guilt instead of innocence. *State v. Bodoh*, 226 Wis. 2d 718, 727–28, 595 N.W.2d 330 (1999); *Poellinger*, 153 Wis. 2d at 506. Since drawing an inference is a finding of fact, this Court must accept the inferences that could be drawn consistent with guilt even if other inferences could also be drawn from the evidentiary facts. *State v. Routon*, 2007 WI App 178, ¶ 17, 304 Wis. 2d 480, 736 N.W.2d 530. An inference may be rejected on appeal only if it is unreasonable as a matter of law. *See State v. Wenk*, 2001 WI App 268, ¶ 8, 248 Wis. 2d 714, 637 N.W.2d 417.

“The function of the jury is to decide which evidence is credible and which is not and how conflicts in the evidence are to be resolved.” *Poellinger*, 153 Wis. 2d at 503. The jury determines the credibility of witnesses and the weight of the evidence. *Id.* at 504. This Court may not substitute its own determination of guilt or innocence unless the evidence is so insufficient that no jury could have reasonably found the defendant guilty. *Id.* at 507. If there is any possibility that the jury could have found the facts and drawn the inferences necessary to find guilt beyond a reasonable doubt, this Court cannot overturn that finding even if the court believes the defendant should not have been convicted. *Id.*

The jury may draw a negative inference from the defendant’s incredible testimony because the defendant’s fabrications allow for an inference of guilty knowledge. *See State v. Kreuser*, 91 Wis. 2d 242, 249, 280 N.W.2d 270 (1979). The negative inference drawn from a defendant’s account that a jury might reasonably consider fabricated does not, by itself,

“carry the burden of proof beyond a reasonable doubt establishing the element of guilty knowledge. However, it will support an inference of guilt in combination with other inferences drawn from other facts.” *Id.* (citations omitted).

B. The jury reasonably inferred, based on the evidence, credibility determinations, and proper inferences, that Wooldridge knowingly possessed methamphetamine.

Wooldridge argues that the State did not present sufficient evidence to support the inference that Wooldridge “knew that the syringe contained methamphetamine. (Wooldridge’s Br. 10.)

Wooldridge first argues that “to the naked eye,” the syringe appeared to “contain[] trace amounts of blood” and that “[a] lay person would not have known that the bloody residue in the syringe contained” methamphetamine.” (Wooldridge’s Br. 11.)

This argument ignores the context in which the syringe was found. It ignores the evidence that Wooldridge merely nodded when the officer told her he found a bloody syringe in her purse and then admitted to using methamphetamine a week earlier.

The court instructed the jury that it could not look into Wooldridge’s mind but must determine her knowledge that there was methamphetamine in the syringe based on her “acts, words, and statements, if any” and “from all the facts and circumstances in this case bearing upon knowledge or belief.” (R. 47:142–43.) The court also instructed the jury that it must weigh the evidence, taking “into account matters of your common knowledge and your observations and experience in the affairs of life” and, as “the sole judges” of witnesses’ credibility and believability, it had a duty “to scrutinize and to weigh the testimony of the witnesses and to determine the effect of the evidence as a whole.” (R. 47:145.)

Following these instructions and based on the evidence, the jury properly inferred Wooldridge's knowledge.

Wooldridge implies that the chemical process that the lab analyst used to confirm the presence of methamphetamine in the syringe is relevant because it shows that a lay person who did not know anything about the syringe could not have figured out what was in the syringe. (Wooldridge's Br. 12.)

This ignores that the State could prove Wooldridge's knowledge of the methamphetamine in the syringe in her purse through both direct and circumstantial evidence that allowed the jury to infer her knowledge. *Poellinger*, 153 Wis. 2d at 507–08. It ignores the inference that Wooldridge, as a person who had knowledge of methamphetamine use and had used within the previous week, would know what was in that syringe, whether she was the person who used it or not.

The jury heard that the officer did not ask Wooldridge if she knew what was in the syringe. (R. 47:98.) “The rule that the evidence must exclude every reasonable hypothesis of innocence does not mean that if any of the evidence brought forth at trial suggests innocence, the jury cannot find the defendant guilty.” *Poellinger*, 153 Wis. 2d at 503. Wooldridge has not shown that the jury's verdict was so in conflict with fully established facts as to make its determination of her guilt “inherently incredible.” *State v. King*, 187 Wis. 2d 548, 564, 523 N.W.2d 159 (Ct. App. 1994).

The jury believed Officer Prinsen. Based on the testimony and the jury's credibility determinations, the jury could reasonably infer that Wooldridge knew there was methamphetamine in the syringe because it was in her purse, she was an acknowledged methamphetamine user, and she admitted recent use. Thus, the jury reasonably inferred that Wooldridge knowingly possessed methamphetamine.

C. Wooldridge’s argument in support of her insufficient evidence claim is unavailing.

Wooldridge relies on *Kabat v. State*, 76 Wis. 2d 224, 251 N.W.2d 38 (1977), and its holding that while “possession of a modicum of an illegal drug is sufficient” to sustain a conviction, the presence of the drug must be in “such a form as reasonably imputed knowledge” to the defendant and allowed the jury to infer the defendant’s knowledge of the presence of the drug. *Id.* at 228–29. (Wooldridge’s Br. 11–12.)

In *Kabat*, the defendant was convicted of possession of marijuana based on a tiny amount of residue scraped from the base of a pipe. *Id.* at 226. *Kabat* held that to convict a defendant of possession of a drug, the State “must prove not only that the defendant was in possession of a dangerous drug but also that he knew or believed he was.” *Id.* at 227 (citation omitted); accord *Poellinger*, 153 Wis. 2d at 508.

Kabat is distinguishable. In *Kabat*, the ash residue in the marijuana pipe was not enough to prove Kabat’s knowledge for several reasons: Kabat testified that he had not used the pipe since cleaning it, he did not know there was marijuana remaining in the pipe, the pipe contained less than one-half of a gram of ash, and the chemist who tested the residue said it was not visible to the naked eye and did not have any smell that would identify it as marijuana. *Kabat*, 76 Wis. 2d at 226, 229.

Thus, the court held that there was insufficient evidence to show Kabat’s knowledge because the “lay person could not be expected to know whether the burnt material in the pipe still contained ingredients of the controlled substance.” *Id.* at 229. The court did not overrule previous case law “that possession of a modicum of an illegal drug is sufficient,” but held that, in this particular case, “the amount and form of the substance found in the pipe is not sufficient

to impute to Kabat knowledge that the substance contained ingredients of marijuana.” *Id.*

The limited holding in *Kabat* does not help Wooldridge. Here, the bloody residue containing the methamphetamine was visible. There was no evidence offered that Wooldridge had cleaned the syringe after it was last used. Indeed, the presence of blood in the syringe strongly suggests that the syringe had not been cleaned. Thus, while Kabat could not have known that the ash residue in the pipe contained a controlled substance, a user of methamphetamine who had not cleaned a used syringe could know it still contained residue of the drug.

In the more recent *Poellinger* decision, involving a sufficiency of the evidence challenge to a conviction for possession of cocaine, the supreme court held that despite Poellinger’s testimony that she believed the vial in her purse was empty and no longer contained cocaine, the evidence supported the jury’s finding that she knew or believed that the vial contained cocaine. *Poellinger*, 153 Wis. 2d at 509. The court held that the jury properly concluded, based on “its experience in the affairs of life, that people usually look at a bottle when replacing its cap to obtain the proper alignment” and thus “could reasonably infer that the defendant looked at the vial when replacing its cap, saw the white powder residue on the threads holding the cap, and, therefore, knew that there was cocaine residue on the vial at the time of her arrest.” *Id.*

Just as the jury could reasonably infer that Poellinger looked in the bottle and was able to see the cocaine powder in the cap, here the jury could reasonably infer that Wooldridge had seen the bloody residue in the syringe in her purse and was aware that the syringe had been used to administer methamphetamine. From the whole of the testimony, the jury properly inferred her knowledge of the methamphetamine in the syringe in her purse, choosing between conflicting

inferences to conclude that she knew about the drugs. See *Poellinger*, 153 Wis. 2d at 506. The jury's inference is sound.

Wooldridge argues that this case is more like *Kabat* than *Poellinger* (Wooldridge's Br. 11–12) and that her conviction should be reversed because “the state had only the fact that the bloody residue found on a used syringe in [her] purse tested positive for the presence of methamphetamine.” (Wooldridge's Br. 13.) Wooldridge is wrong. Wooldridge distinguishes this case from *Poellinger* (Wooldridge's Br. 12) on the ground that Poellinger admitted “that she knew that the vial contained cocaine at one time.” *Poellinger*, 153 Wis. 2d at 509. But that was not the basis for the outcome in that case. Kabat also testified that he had previously used the pipe for marijuana but after cleaning it did not know it still contained a controlled substance. *Kabat*, 76 Wis. 2d at 226. Thus, neither Kabat's nor Poellinger's past knowledge that the pipe or container had previously contained a controlled substance was dispositive to the court's holding regarding their knowledge of the controlled substance at the time of their arrest. In *Poellinger*, the court determined that, whether or not the defendant knew that the vial had previously contained cocaine, the jury properly inferred, based on its common sense and experience, that she had seen the cocaine powder in the vial and thus had knowledge that the vial contained cocaine. *Poellinger*, 153 Wis. 2d at 509.

As in *Poellinger*, the jury's inference in this case is based on evidence. The officer testified that Wooldridge reacted to his discovery of the used syringe in her purse by nodding. A jury could infer from this testimony that Wooldridge was already aware that a used syringe was in her purse. The officer testified that Wooldridge admitted using methamphetamine the week before. A jury could infer from that testimony that Wooldridge had knowledge of drug use and that the syringe had been used to administer methamphetamine by her or someone she knew. It defies

common sense that an acknowledged user of methamphetamine would have a syringe in her purse that had been used to administer methamphetamine and would not know that traces of methamphetamine could be found in it. The jury properly used its common sense and made credibility determinations to infer Wooldridge's knowledge of the methamphetamine, based on its "common knowledge and experience in the affairs of life." *Poellinger*, 153 Wis. 2d at 508–09.

In sum, the State presented sufficient evidence that Wooldridge knew or believed that the syringe in her purse contained methamphetamine. The evidence presented at trial was not "so lacking in probative value and force" that "as a matter of law . . . no reasonable trier or fact could have drawn the inference that [Wooldridge] knew that she possessed" methamphetamine. *Poellinger*, 153 Wis. 2d at 508–09.

CONCLUSION

This Court should affirm the judgment of conviction.

Dated this 12th day of April 2023.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Sonya K. Bice
SONYA K. BICE
Assistant Attorney General
State Bar #1058115

Wilfredo Najarro
WILFREDO NAJARRO
Law Student

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3935
(608) 294-2907 (Fax)
bicesk@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 3,120 words.

Dated this 12th day of April 2023.

Electronically signed by:

Sonya K. Bice

SONYA K. BICE

Assistant Attorney General

Wilfredo Najarro

WILFREDO NAJARRO

Law Student

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 12th day of April 2023.

Electronically signed by:

Sonya K. Bice

SONYA K. BICE

Assistant Attorney General

State Bar #1058115

Wilfredo Najarro

WILFREDO NAJARRO

Law Student