

No. 97-1142

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ROY MALVITZ,

DEFENDANT-APPELLANT.

ERRATA SHEET

Marilyn L. Graves
Clerk of Court of Appeals
P.O. Box 1688
Madison, WI 53701-1688

Court of Appeals District II
2727 N. Grandview Blvd.
Waukesha, WI 53188-1672

Court of Appeals District I
633 W. Wisconsin Ave., #1400
Milwaukee, WI 53203-1918

Court of Appeals District IV
119 Martin Luther King Blvd.
Madison, WI 53703

Court of Appeals District III
740 Third Street
Wausau, WI 54403-5784

Hon. John D. McKay
Trial Court Judge
100 S. Jefferson
Brown County Courthouse
Green Bay, WI 54301

Jennifer Krapf
Administrative Assistant
119 Martin Luther King Blvd.
Madison, WI 53703

Lynn Verheyen, Trial Court Clerk
100 S. Jefferson
Brown County Courthouse
Green Bay, WI 54301
(L. C. # 95-CF-33)

Peg Carlson
Chief Staff Attorney
119 Martin Luther King Blvd.
Madison, WI 53703

Gerald P. Boyle
Boyle, Boyle & Smith, S.C.
1124 West Wells Street
Milwaukee, WI 53233

Mary E. Burke
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

William C. Wolford
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

Dana J. Johnson
Asst. District Attorney
P.O. Box 23600
Green Bay, WI 54305

PLEASE TAKE NOTICE that the attached page 10 is to be substituted for page 10 in the above-captioned opinion which was released on November 4, 1997.

Dated this 13th day of November, 1997.

indicating that the girl was not inappropriately dressed, was walking casually to her home, and did not appear to be in distress.

Direct evidence of a defendant's intent is frequently a matter to be determined from circumstantial evidence. In this case, Malvitz concedes that he approached the young girl in question twice, that he paused at an intersection for several minutes, and that he asked her if she wished to take a ride in his car. Although he claimed that his intent was innocent and that he paused at the intersection only to refill his coffee cup, the jury was not required to accept his explanation. Malvitz's behavior, which so concerned the postal carrier that he decided to follow him, and the fact that Malvitz's testimony about the girl's apparent distress was inconsistent with other testimony, are sufficient to permit a finding that his actions were intended for some type of sexual gratification. Therefore, we reject Malvitz's argument that the evidence was insufficient to support the conviction.

By the Court.—Judgment and order reversed and cause remanded.

Not recommended for publication in the official reports.