

No. 98-1451-CR

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT II

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STATE OF WISCONSIN,

FILED

PLAINTIFF-RESPONDENT,

May 20, 1999

v.

CLERK OF  
COURT OF APPEALS  
OF WISCONSIN

DAVID P. BAKER,

DEFENDANT-APPELLANT.

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**ERRATA SHEET**

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PLEASE TAKE NOTICE that the attached page 5 is to be substituted for page 5 in the above-captioned opinion which was released on May 5, 1999.

The police officer who took the victim's statement testified that the victim was very upset when he related the incident to the officer. The officer testified that the victim told him Baker reached for the victim's belt as if he were going to grab it.

Baker testified and denied that he followed the victim to the tanning booth and propositioned him for sex. In rebuttal, the victim's employer testified that the victim was very upset, red-faced and shaking when he arrived at work a few hours after his encounter with Baker. The victim told the employer that a man had exposed himself to him and that he had tried to get away from the man by backing away.

On appeal, Baker argues that there is insufficient evidence that he attempted to commit a third-degree sexual assault. He argues that the evidence shows that he attempted to convince the victim to have consensual sex; he did not attempt a sexual assault. Baker notes the victim testified that Baker never touched, grabbed or lunged at the victim.

We agree that the record contains some inconsistent testimony from the victim on the question of whether Baker reached for his belt while kneeling six inches in front of the victim's crotch. However, it was for the jury to resolve this inconsistency. The victim testified that Baker made a motion to reach for his belt after the victim had repeatedly and forcefully declined Baker's requests for sex. In gesturing toward the victim's belt from a position six inches from the victim's crotch after cornering the victim in a small tanning booth, the jury could infer that Baker went beyond his persistent demands for sex and demonstrated an intent to sexually assault the victim. A defendant's intent "may be inferred from the defendant's conduct, including his words and gestures taken in the context of the