COURT OF APPEALS
DECISION
DATED AND FILED

January 29, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0125-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DANIEL L. LITSEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Deininger, J.

PER CURIAM. Daniel Litsey appeals from a judgment convicting him of one count of first-degree sexual assault of a child, contrary to § 948.02(1), STATS., one count of second-degree sexual assault of a child, contrary to § 948.02(2), STATS., and seven counts of second-degree sexual assault by use or threat of force or violence, contrary to § 940.225(2)(a), STATS. Litsey does not

contest his conviction on the first two charges. He does, however, contend that the jury heard insufficient evidence on which to find him guilty on the seven counts of sexual assault by use or threat of force or violence. We disagree and therefore affirm.

The State charged Litsey with sexually assaulting his step-daughter, A.F., once when she was twelve, once when she was thirteen, and seven times when she was sixteen or seventeen by threatening to use force or violence. A.F. testified that her first sexual contact with Litsey occurred in Iowa when she was twelve, when he forcibly raped her. Thereafter, she had repeated sexual intercourse with Litsey after they moved to Wisconsin. In fact, she testified that from the age of thirteen until she reported the assaults almost four years later, she had sexual intercourse with him almost every day.

A.F. did not testify that Litsey threatened to use force or violence to coerce her on any specific occasion when they had intercourse. She did, however, testify that the time when he physically forced her to have sex in Iowa was always in her thoughts and always made her afraid to resist him. She also testified that before 1993, Litsey threatened at least three times to kill her, or have her killed, if she reported his assaults.

The jury found A.F.'s testimony sufficient to establish sexual intercourse by threat of force or violence on each of the seven charged occasions. Litsey contends on appeal that the evidence of a rape when A.F. was twelve and threats to kill her when she was fourteen were not sufficient to establish the threat of force or violence element of § 940.225(2)(a), STATS., for acts done when A.F. was sixteen and seventeen.

On review of the jury's verdict, we determine if the evidence, when viewed most favorably to the verdict, allows a reasonable jury to find guilt beyond a reasonable doubt. *See* ***State v. Poellinger***, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990). Even if the same evidence allows a reasonable inference consistent with innocence, we must adopt the inference that supports the jury's verdict. *See* ***id***. at 506-07, 451 N.W.2d at 757.

The evidence was sufficient to convict Litsey of violating § 940.225(2)(a), STATS., on all seven occasions. The jury may find the force element of that section satisfied by evidence of prior threats or acts whose effect lingers on. *See* ***State v. Speese***, 191 Wis.2d 205, 213, 528 N.W.2d 63, 66 (Ct. App. 1995), *rev'd on other grounds*, 199 Wis.2d 597, 545 N.W.2d 510 (1996). Even where the threats or acts are somewhat distant in time, the question remains whether, in context, the victim's fear remained reasonable. ***Id***. at 213-14, 528 N.W.2d at 66-67. Here, the context included the inherent authority Litsey had over A.F. in his step-parent role, evidence of his bad temper, and the fact that the family lived in somewhat isolated circumstances where A.F. was frequently alone with Litsey. Under these circumstances, the jury could reasonably conclude that A.F.'s continued acquiescence in the assaults was rationally motivated by Litsey's prior threats and use of force, despite the passage of years since they occurred.

By the Court.—Judgment affirmed.

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