

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 8, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP2584-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2013CF94

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VICTOR A. HAVENGA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Langlade County: FRED W. KAWALSKI, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Victor Havenga appeals a judgment convicting him of two counts of false imprisonment and one count of disorderly conduct, all as a

repeat offender.¹ He argues the State failed to present sufficient evidence to support the convictions. We affirm the judgment and order.

BACKGROUND

¶2 The State's case was based primarily on the testimony of four witnesses, thirteen-year-old G.L., her ten-year-old brother A.L., his ten-year-old friend L.E. and their neighbor. The three children were fishing at a lake. G.L. and L.E. fished from a dock while A.L. fished at a beach. Havenga approached A.L. at the beach and followed him to the dock when A.L. joined the other children. A.L. told G.L. that a strange man was following him, and G.L. grabbed her cell phone and left the dock, ducking under Havenga's outstretched arm. She walked up a hill and watched her brother and his friend from a distance.

¶3 A.L. testified Havenga insisted on removing caught fish from their hooks. A.L. saw Havenga remove a fish from L.E.'s hook by pressing his chest to L.E.'s back, reaching his arms around L.E. to grab the fish. Havenga followed the same procedure removing A.L.'s fish. A.L. testified he tried to leave the dock a few times, but Havenga blocked him from doing so by stepping in front of him. A.L. testified he felt scared and trapped.

¶4 L.E.'s testimony mirrored A.L.'s. He testified he felt a little uncomfortable about the way Havenga pressed up against him and put his arms around him to remove the fish. He testified Havenga blocked him from reaching his tackle box near the land end of the dock. L.E. testified that when wanted to get

¹ The notice of appeal also purports to appeal an order denying Havenga's postconviction motion. However, the arguments made on appeal do not relate to that motion.

off the dock he “said excuse me, but he [Havenga] wouldn’t let, let me get past him.”

¶5 G.L. became increasingly concerned when she saw Havenga “rubbing his private parts on [A.L. and L.E.]” She tried to call her mother on the phone but was not able to make contact, so she called a neighbor. She asked the neighbor to come immediately because she was scared. The neighbor testified that G.L. called her for assistance and repeatedly asked her to “please hurry up.” When the neighbor arrived at the lake, G.L. was crying and pointed out Havenga as the man who had been following them. The neighbor said Havenga was “very close to the boys.” Havenga had his arms stretched out preventing L.E. from getting to the worm container. The neighbor called to the boys and told them it was time to come home. Havenga then immediately turned and left the dock, saying nothing to the neighbor and making no eye contact.

DISCUSSION

¶6 When reviewing the sufficiency of the evidence to support a conviction, this court must view the evidence most favorably to the State and conviction, and it will reverse the conviction only if 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. *State v. Poellinger*, 153 Wis. 2d 493, 506-07, 451 N.W.2d 752 (1990). This court must accept and follow any inference reasonably drawn by the jury unless the evidence on which that inference is based is incredible as a matter of law. *Id.* The jury is the sole arbiter of the witnesses’ credibility and alone is charged with the duty of weighing the evidence. *State v. Webster*, 196 Wis. 2d 308, 320, 538 N.W.2d 810 (Ct. App. 1995).

¶7 There are five elements to false imprisonment: (1) the defendant confined or restrained the victim; (2) he or she did so intentionally; (3) he or she did so without the victim's consent; (4) the defendant had no lawful authority to confine or restrain the victim; and (5) the defendant knew the victim did not consent and knew he had no lawful authority to confine or restrain the victim. WIS JI—CRIMINAL 1275 (2015). To establish disorderly conduct, the State had to prove conduct that "under the circumstances as they then existed, tended to cause or provoke a disturbance." WIS JI—CRIMINAL 1900 (2012). Disorderly conduct includes all acts and conduct that are of a nature to corrupt the public morals or to outrage the sense of public decency, whether committed by words or acts. *Id.* It includes conduct of a type, "which tends to disrupt good order and provoke a disturbance" and applies to conduct that "unreasonably offends the sense of decency or propriety of the community." *Id.*

¶8 The testimony of the State's witnesses and reasonable inferences the jury could draw from their testimony sufficiently established all of the elements of false imprisonment and disorderly conduct. Havenga only contends the evidence was insufficient to allow a reasonable jury to find that Havenga confined or restrained either of the boys intentionally. He argues no evidence was presented that Havenga instructed either child to remain on the dock or that either of the boys informed Havenga of his desire to move or leave the dock. Havenga cites no authority for the proposition that the perpetrator of a false imprisonment must verbalize a command to stay or that the victim must verbalize a desire to leave for there to be a finding of intent. Havenga's actions physically blocking the boys from their attempts to leave the end of the dock and disregarding L.E.'s polite "excuse me," adequately establish Havenga's intent to confine or restrain both boys. The timing and circumstances of Havenga's departure when an adult

arrived on the scene also support the inference that he knew he was engaging in wrongdoing.

¶9 Evidence that Havenga rubbed his body against the boys, frightened them and caused G.L. to cry and call a neighbor for help was sufficient to establish the elements of disorderly conduct. His actions had an obvious tendency to cause a disturbance and unreasonably offended the community's sense of decency or propriety.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

