

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 30, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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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. 2004AP2357-CR**

**Cir. Ct. No. 2002CF1716**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**FELIPE R. DOMENECH,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Dane County: DAVID T. FLANAGAN, Judge. *Affirmed.*

Before Deininger, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Felipe Domenech appeals a judgment convicting him of first-degree reckless endangerment, while armed, and extortion while armed. He also appeals an order denying postconviction relief. The issues are whether the trial court erred by admitting transcribed portions of a telephone

conversation at Domenech's jury trial, and whether the evidence was sufficient to prove a completed extortion rather than an attempted extortion. We affirm.

¶2 The State's complaint alleged Domenech approached Ann Lynch in a park as she was walking her dogs, seized her at knifepoint, and extorted her by saying he would kill her unless she made her dogs go away or go free. In a pretrial ruling, over Domenech's objection, the trial court ruled admissible the following transcribed portion of a telephone conversation between Domenech and his friend, Orlando Verdecia.

FD: And ... then, supposing that I had done it, Orlando, and if the woman did not see me, they can't do anything to me. (SC)

OV: Yeah. (SC) That, that's what I say.

FD: Nothing, they can't do a damn thing to me, she has to testify that she saw me and the records say that it all happened from behind and no one saw anything, so I don't care if a hundred people saw me there, the one who has to say "I saw him"—UI—because it could have been another person that came out of the bushes and went into the bushes, then because they saw Felipe leaving in a car, Felipe goes to jail.... (SC)

OV: Um hum.

FD: Orlando, I took a similar case in the eighties to a jury and I won it. It was something Guillermito and I did and, and by our clothes ... and they caught us immediately ... and they described us by our clothes but not our faces, Orlando, and they had to let me go. (SC)<sup>1</sup>

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<sup>1</sup> The transcriber used (SC) to denote simultaneous conversations and (UI) for unintelligible conversation.

At trial, Lynch testified that her two dogs were unleashed and close by when Domenech attacked her. She further testified that he told her to make the dogs go away or make the dogs run free. She added:

He repeated that he wanted me to make the dogs go free, and I believed that he also said or let the dogs go free and I won't kill you, or let the dogs go free or I will kill you. I don't remember which, but he said one of those things.

The State also introduced Domenech's transcribed statement into evidence.

¶3 The jury found him guilty of both charges and the trial court denied postconviction relief. He contends that the evidence was insufficient to convict him of extortion because the act he ordered Lynch to do, freeing her dogs, was something she could not do because they were already free. He asks this court to order his conviction amended to attempted extortion. He also contends that his telephone conversation was not admissible because the court failed to consider whether it contained inadmissible other acts evidence, and because it had no probative value in any event.

¶4 We conclude that the evidence was sufficient to support a conviction for the completed crime of extortion. The elements of the completed crime, in relevant part, are: (1) a malicious threat to do injury, and (2) the intent to extort money or compel another person to do any act against his or her will. WIS JI—CRIMINAL 1473(B). Domenech does not dispute the evidence proving the first element. The second requires proof of an intent to compel, and a jury could reasonably find that intent based on Lynch's testimony. Domenech argues, in effect, that we must add a third element: that the compelled act be one the victim is able to perform. We reject the argument. The possibility of accomplishing the

act in question is irrelevant to the completed crime, which depends solely on the perpetrator's intent.

¶5 We also conclude that Domenech waived any argument that the trial court improperly allowed other acts evidence by admitting the transcribed telephone statement into evidence. The State sought to use the statement on the grounds that it constituted an admission to the attack on Lynch. Counsel for Domenech objected, but did not seek a ruling on whether the statement contained inadmissible other acts evidence. Rather, he argued that the statement did not constitute an admission to the present crime. Domenech cannot now claim an other acts error on appeal. *See State v. Corey J.G.*, 215 Wis. 2d 395, 405, 572 N.W.2d 845 (1998) (specific objection required to give trial court opportunity to remedy the claimed error, and waiver occurs absent specific objection).

¶6 The trial court properly admitted the transcribed statement as an admission by Domenech. The statement carries a reasonable inference that he hoped to get away with this crime because the victim might not identify him, as with a similar crime he apparently committed years previously. One might also reasonably draw no inference of guilt from the statement, based on Domenech's indication that he was speaking hypothetically. ("Supposing that I had done it...") However, where competing reasonable inferences are available from the same evidence, it is the fact finder's responsibility to choose between them. *State v. Friday*, 147 Wis. 2d 359, 370-71, 434 N.W.2d 85 (1989). The trial court reasonably chose to give the jury that opportunity here.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

