

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 7, 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. 2004AP1840-CR**

**Cir. Ct. No. 2003CF284**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CARSON DARNELL COMBS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Monroe County:  
STEVEN LUSE ABBOTT, Judge. *Affirmed.*

¶1 DEININGER, P.J.<sup>1</sup> Carson Combs appeals a judgment convicting him of criminal trespass to a dwelling.<sup>2</sup> He claims the State presented insufficient

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

<sup>2</sup> Combs was also convicted of misdemeanor bail jumping. His notice of appeal, however, recites that Combs appeals only a “part of the final judgment of conviction,” thereafter  
(continued)

evidence to permit jurors to find him guilty of criminal trespass “to the dwelling of another,” in violation of WIS. STAT. § 943.14. Combs also claims the trial court erred in denying his motion at the close of the State’s case to dismiss the criminal trespass charge. We conclude the State presented sufficient evidence to convict Combs of criminal trespass to the dwelling of another and that the trial court did not err in denying Combs’s motion to dismiss the charge. Accordingly, we affirm the appealed judgment.

### **BACKGROUND**

¶2 The State charged Combs with misdemeanor battery, as an act of domestic abuse, in July of 2003. He was released on a signature bond containing a condition that he have no contact with his wife, Karen, the alleged victim of the battery. The bond condition was later modified to permit Combs to reside in the couple’s apartment until midnight on September 1, 2003, but thereafter to have no contact with Karen “or her residence.” On September 6, 2003, however, Combs entered the apartment where Karen was residing and found her and a man in bed sleeping. An altercation ensued, during which the man was wounded with a knife.

¶3 The State filed five new charges against Combs: attempted first degree intentional homicide, criminal trespass to a dwelling, bail jumping, aggravated battery, and attempted aggravated battery. A jury acquitted Combs of the three felonies but found him guilty of the two misdemeanors, criminal trespass

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describing the conviction for criminal trespass to a dwelling. In the “conclusion” of his opening brief, Combs asks us to reverse only the criminal trespass conviction. Accordingly, we conclude the bail jumping conviction is not before us and do not address it further in this opinion.

and bail jumping. Combs appeals only his conviction for criminal trespass to a dwelling. (See footnote 2.)

### ANALYSIS

¶4 Combs first argues that the State failed to establish beyond a reasonable doubt that he intentionally entered “the dwelling of another,” an element of the crime of criminal trespass to a dwelling under WIS. STAT. § 943.14. He contends that, because his name was on the apartment lease as a co-tenant, the apartment in question was “his” residence as much as it was Karen’s.

¶5 We will not set aside a conviction for insufficiency of the evidence “unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” See *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Although a challenge to the sufficiency of the evidence to support a guilty verdict seems to address the evidence that was introduced at trial and its weight and probative value, such a challenge also typically involves a question of statutory interpretation. That is, in this appeal, as in many challenging a conviction on grounds of insufficiency of the evidence, our primary inquiry is directed at determining what conduct the legislature intended to criminalize, given the words it chose to define the crime. The question before us is thus largely one of statutory interpretation, which we decide de novo. See *Truttschel v. Martin*, 208 Wis. 2d 361, 364-65, 560 N.W.2d 315 (Ct. App. 1997).

¶6 When we construe a statute, we begin with the language of the statute and give it its common, ordinary, and accepted meaning, except that technical or specially defined words are given their technical or special definitions.

*State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis.2d 633, 681 N.W.2d 110. However, it is also true “that a judicial construction of a statute becomes part of the statute unless subsequently amended by the legislature.” See *Wenke v. Gehl Co.*, 2004 WI 103, ¶31 n.17, 274 Wis. 2d 220, 682 N.W.2d 405. We have previously interpreted the very language that is at issue in this appeal, and we will therefore apply that interpretation to the facts before us.

¶7 WISCONSIN STAT. § 943.14, entitled “Criminal trespass to dwellings,” states: “Whoever intentionally enters the dwelling of another without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace, is guilty of a Class A misdemeanor.” WISCONSIN JI—CRIMINAL 1437 provides the following definition relating to the first element of the crime: “‘Dwelling’ means the (apartment) (room) (building) (or other structure) in which a person makes a home.” The pattern instruction, which the circuit court gave in this case, does not further define what constitutes “the dwelling of another.” However, we construed this term in deciding *State v. Carls*, 186 Wis. 2d 533, 521 N.W.2d 181 (Ct. App. 1994).

¶8 The defendant in *Carls* and his wife were in the process of a divorce. *Id.* at 534. The wife obtained a domestic abuse injunction that prohibited the defendant from entering her residence, which happened to be titled in the couple’s name as joint marital property. *Id.* at 535. The defendant nevertheless entered the house the wife was occupying, without her consent, and the State charged him with violating WIS. STAT. § 943.14. *Id.* Following a jury trial and conviction for criminal trespass to a dwelling, he appealed, arguing “that he did not ‘enter[ ] the dwelling of another’ because he owned the house in joint tenancy.” *Id.* at 536.

¶9 We rejected the defendant’s argument and concluded that the former marital home, regardless of how title was held at the time of the offense, was then the “dwelling of another” because the defendant no longer resided there:

Although Donald jointly owned the home, he no longer lived there. Pamela used their home for her residence; Donald did not. Therefore, according to the plain meaning of the statute, the home was not Donald’s dwelling but the dwelling of another, namely Pamela. Under this analysis, Donald and Pamela’s ownership interests are irrelevant; the statute protects a person’s interests in occupying a private residence.

*Id.* at 536. Similarly, although the apartment at issue in this case was the former marital residence of both Combs and his wife, Karen, it was only Karen’s dwelling at the time of the offense because she was the only one living there. Combs had moved out and was living elsewhere, albeit “temporarily.” The fact that he may have still been a co-tenant on the lease is “irrelevant.” *See id.*

¶10 Jurors heard the following testimony from Combs during his cross-examination by the State:

Q And, in fact, you moved out of the residence, didn’t you?

A I moved items out of the residence, personal items which I needed to. We had things pending....

....

Q And when you moved those things out of the residence, it was enough things for you to use temporarily to live, right?

A Yes.

....

Q Before going to the house where Karen was, where had you been just before that?

A I was at an apartment which I was renting.

We conclude that the foregoing was sufficient evidence for jurors to find Combs guilty of entering “the dwelling of another,” as we interpreted that term in *Carls*.<sup>3</sup>

¶11 Combs does not challenge the sufficiency of the evidence to support the remaining elements of criminal trespass to a dwelling (intentional entry, non-consent of person lawfully on the premises, circumstances tending to create or provoke a breach of the peace, and defendant’s knowledge of the foregoing). We thus reject his claim of insufficient evidence to convict him of violating WIS. STAT. § 943.14, and we turn to Combs’s claim that the trial court erred in denying his motion to dismiss the criminal trespass charge at the close of the State’s case.

¶12 Our standard of review does not change. *See State v. Scott*, 2000 WI App 51, ¶12, 234 Wis. 2d 129, 608 N.W.2d 753. If the jury, viewing the evidence in the light most favorable to the State, could have reasonably decided that the defendant was guilty, we will uphold the trial court’s decision. *Id.* Now, however, we may consider only the evidence presented by the State prior to its resting its case, which is when Combs moved to dismiss. *See id.*, ¶10. Combs again challenges only the State’s proof that he had entered the “dwelling of another,” not its proof of any of the remaining elements of the crime. At the very beginning of Karen’s testimony, the prosecutor asked her, “Now [Combs] wasn’t living with you in that residence on September 6th?,” and she replied, “No, he wasn’t.” As we have discussed above, this testimony from Karen was sufficient

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<sup>3</sup> Combs argues that *State v. Carls*, 186 Wis. 2d 533, 521 N.W.2d 181 (Ct. App. 1994), does not apply to the present facts and cites an unpublished opinion in support. Parties may not, however, cite unpublished decisions as precedent or for their persuasive value. *See* WIS. STAT. RULE 809.23(3). We note as well that the decision in question distinguished *Carls* because, in that case, it was “undisputed” that the defendant still resided in the dwelling in question at the time of the offense. As we have explained, the evidence in the present record shows that Combs did *not* reside in the apartment occupied by Karen at the time of the offense.

under *Carls* for the State's prosecution for criminal trespass to survive Combs's motion to dismiss on the issue he raised.

¶13 Combs argues that, in its trial court argument opposing the motion, the State mischaracterized the showing it needed to make by relying on the “unlawfulness” of Combs's entry to the apartment. The State argued that, based on the existence of the bond condition prohibiting Combs from going there, he had unlawfully entered the apartment. The trial court apparently accepted this argument, saying that “[Combs] was upon the premises unlawfully .... So I am denying that motion.” However, we may affirm a trial court's decision if the court reached the correct result, even if it did so for the wrong reason. See *State v. Alles*, 106 Wis. 2d 368, 391, 316 N.W.2d 378 (1982). As we have discussed, the State presented testimony during its case in chief that Combs was not residing in the apartment in question at the time of the offense, which was sufficient evidence to survive Combs's motion attacking its proof that he had entered “the dwelling of another.”

¶14 Finally, Combs contends that, by imposing a bond condition in the prior misdemeanor prosecution that prohibited him from occupying the apartment that he had previously shared with Karen, the trial court effectively “terminated his lease” and “evicted” him, actions for which Combs claims the court lacked authority. As we have noted, however, Combs challenges in this appeal only his conviction for criminal trespass to a dwelling, not his conviction for bail jumping. The bond condition that he remove himself and his personal belongings from the marital apartment had no bearing on the criminal trespass conviction. Had he violated the bond condition and continued to reside in the apartment as of the date of the offense, he, arguably, could not have been convicted of entering the dwelling “of another.” But that is not what happened. It is the *fact* of his non-

occupancy of the apartment, not the reason for it, that rendered Combs liable for criminal trespass. Because he does not seek to overturn his bail-jumping conviction, we have no need to address whether the bond condition was proper.

### CONCLUSION

¶15 For the reasons discussed above, we affirm the appealed judgment.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.



