

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 5, 2005**

Cornelia G. Clark  
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. 2004AP2424-CR**

**Cir. Ct. No. 2003CF33**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOSE A. ARELLANO,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgments of the circuit court for Ozaukee County:  
THOMAS R. WOLFGRAM, Judge. *Affirmed.*

Before Snyder, P.J., Nettesheim and Anderson, JJ.

¶1 PER CURIAM. Jose A. Arellano appeals from judgments convicting him of second-degree sexual assault by use of force contrary to WIS.

STAT. § 940.225(2)(a) (2003-04)<sup>1</sup> and false imprisonment contrary to WIS. STAT. § 940.30. Arellano was charged with falsely imprisoning and forcibly sexually assaulting a co-worker, Jennifer K. On appeal, he challenges the sufficiency of the evidence and his twenty-five year sentence. We conclude that the evidence was sufficient to convict, and the circuit court did not misuse its sentencing discretion. Therefore, we affirm.

¶2 We will uphold a conviction unless the evidence viewed most favorably to the State and the conviction is so lacking in probative value that no reasonable jury could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Once the jury considers the evidence and draws the inferences necessary to support guilt, we cannot reject those inferences unless the evidence is incredible as a matter of law. *Id.* at 506-07. If any possibility exists that the jury could have drawn the appropriate inferences from the trial evidence to find guilt, we may not overturn the verdict. *Id.* at 507.

¶3 On appeal, Arellano concedes that this case required the jury to assess the credibility of the witnesses, particularly Arellano and Jennifer K. Arellano contended that he had consensual sexual contact and intercourse with Jennifer K.; Jennifer K. contended that the contact and intercourse were nonconsensual and forcible and that she was restrained in Arellano's van. In addition to Jennifer K.'s testimony, friends of Jennifer K. testified that she was very upset the night of the assault and told them that Arellano had sexually

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

assaulted her. A police officer confirmed Jennifer K.'s demeanor on the night of the assault. A medical examination revealed that Jennifer K. had injuries to her neck and thigh which were consistent with her account of the forcible sexual assault. The jury found Jennifer K.'s version of events credible, and there is evidence in the record to support the verdict. Arellano's argument on appeal that the jury should have found his version of events more credible is unavailing. Viewed most favorably to the State and the conviction, the evidence is not so lacking in probative value that no reasonable jury could have found guilt beyond a reasonable doubt. *See Poellinger*, 153 Wis. 2d at 501.

¶4 We turn to Arellano's challenge to his sentence. Arellano argues that his sentence was unduly harsh under the circumstances. In its sentencing remarks, the court considered the gravity of the offense, Arellano's character, and the need to protect the public. The court found that Arellano's offenses were very serious and that he denied the victim her basic dignity and the ability to decide with whom she would have intimate contact. The court did not find Arellano's version of events credible. The court considered the need to protect the public because Arellano should have understood but chose to ignore Jennifer K.'s refusals and protestations. The court could not reconcile the presentence investigation report's recommendation of ten years of probation with a twelve-month jail sentence and work release with the gravity of the offenses, the need to punish Arellano, and the need to protect the public. Therefore, the circuit court imposed a twenty-five year sentence consisting of ten years of initial incarceration and fifteen years of extended supervision.<sup>2</sup>

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<sup>2</sup> Arellano received a concurrent one-year prison sentence for the false imprisonment offense.

¶5 The circuit court properly exercised its sentencing discretion. *See State v. Mosley*, 201 Wis. 2d 36, 43, 547 N.W.2d 806 (Ct. App. 1996). The court had a “rational and explainable basis” for the sentence, *see State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197, and adequately discussed the facts and factors relevant to sentencing Arellano, *Mosley*, 201 Wis. 2d at 43-44.

¶6 Arellano concedes that a sentencing court need not adopt a sentence recommendation from any source, including the presentence investigation report. *See State v. Johnson*, 158 Wis. 2d 458, 465, 463 N.W.2d 352 (Ct. App. 1990). Here, the circuit court stated its reasons for rejecting the presentence investigation report’s recommendation of probation.

*By the Court.*—Judgments affirmed.

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

