

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 27, 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. 2004AP3215-CR

Cir. Ct. No. 2002CF4377

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KORVAH D. BORZIE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed.*

Before Vergeront, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Korvah Borzie appeals a judgment convicting him of felony murder. A jury found him guilty in the shooting death of his roommate, Kente Tittle. The issues are whether the circuit court should have suppressed an

inculpatory statement Borzie made while in custody and whether the verdict is supported by sufficient evidence. We affirm on both issues.

¶2 Tittle was shot and killed in his bedroom in the early morning on August 3, 2002. Several hours later, at 1:00 p.m., police arrested Borzie on outstanding arrest warrants. Detectives interrogated Borzie for several hours, during which he maintained that he was not involved in Tittle's death. Meanwhile, detectives were receiving inconsistent statements about the crime from Borzie's girlfriend, Goldie Sansard, who later became his co-defendant. In one of her versions she and Borzie were involved in the shooting and in another version they were not.

¶3 Borzie requested a polygraph examination and received one at 12:00 p.m. on August 4, with results indicating that he was not truthful about the circumstances of Tittle's death. Two hours later police placed him under arrest in connection with Tittle's death. Over the next thirty-six hours detectives continued interrogating Borzie and continued following leads and interviewing other witnesses. By early morning on August 6, detectives had accumulated a significant amount of evidence pointing toward Borzie as the person who shot Tittle, including a statement from Sansard that Borzie shot Tittle after going into Tittle's room to steal money. When confronted with this evidence, Borzie asked for an interview and finally confessed to shooting Tittle, although Borzie insisted that the shooting was accidental. The State filed its complaint against Borzie on August 7.

¶4 Based on that sequence of events, Borzie moved to suppress his confession under the principle that "a detention for a period longer than is reasonably necessary for [the purpose of determining whether to release the

defendant or file a complaint] violates due process and renders inadmissible any confession obtained during the unreasonable period of the detention.” *Phillips v. State*, 29 Wis. 2d 521, 534-35, 139 N.W.2d 41 (1966). The circuit court denied the motion, concluding that the police did not unreasonably detain Borzie in order to obtain a “sew-up” confession.

¶5 The matter proceeded to trial on the charge of felony murder. The evidence included statements by Sansard that Borzie armed himself before the two of them went into Tittle’s bedroom to steal money while Tittle slept. Tittle awoke and briefly struggled with Sansard, after which Borzie deliberately shot him at close range. Afterward, Sansard saw “a whole bunch of money” fall out of Borzie’s pocket. The jury also learned of Borzie’s confession that he entered Tittle’s room and shot him by accident, after which Borzie took some money that lay on the floor.

¶6 We consider first Borzie’s challenge to the circuit court’s denial of the suppression motion. We conclude the circuit court correctly denied the motion. The thirty-six hours between Borzie’s arrest and his statement is the relevant period, as we need not consider the earlier period of time during which he was under arrest on other matters, *see McAdoo v. State*, 65 Wis. 2d 596, 609, 223 N.W.2d 521 (1974), nor the time after he made his statement until he was charged and made his initial appearance. *United States v. Mitchell*, 322 U.S. 65, 70 (1944). During that thirty-six hour period detectives were not merely wrapping up their case by interrogating Borzie, but continued developing new information, and also interrogated and cleared another suspect. This investigative activity took place until the last few hours of Borzie’s pre-statement detention. After that the interrogation continued at Borzie’s request. Under these circumstances, with an

active investigation continuing, we conclude that police properly continued their detention of Borzie, for reasons other than sewing up the case with a confession.

¶7 We next consider Borzie's contention that there was insufficient evidence to support the verdict. Under the State's theory, Borzie committed felony murder because it occurred during his armed robbery of Tittle. The circuit court instructed the jury that a finding of armed robbery required proof beyond a reasonable doubt that Borzie acted forcibly during the crime. The court then defined "forcibly" to mean that Borzie "threatened the imminent use of force against Kente Tittle with the intent to compel Kente Tittle to submit to either the taking or the carrying away of the property."

¶8 Borzie contends there was no basis for finding he committed armed robbery because there was no evidence that he shot Tittle with the intent to compel Tittle to submit to the robbery. He contends, instead, that the only available evidence showed that he shot Tittle only because Tittle woke up and struggled with Sansard. We disagree with Borzie's contention. The jury could reasonably infer that Borzie shot Tittle when Tittle began resisting the attempt to steal his money. In other words, the inference was available that the shooting was for the purpose of forcing Tittle to submit to the robbery. We will reverse a guilty verdict only if the evidence, viewed most favorably to the State, is so lacking in probative value that no jury could have found guilt beyond a reasonable doubt. *State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982). "If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict." *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Under these principles, the verdict must stand.

By the Court.—Judgment affirmed.

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

