

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 28, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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No. 00-0752-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILLIAM N. LEDFORD

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County:
JOHN R. STORCK, Judge. *Reversed.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 ROGGENSACK, J. William Ledford appeals a judgment of the circuit court convicting him of perjury based on his testimony during the preliminary hearing for charges against Raul Rodriguez and requiring Ledford to reimburse Dodge County for the cost of his third court-appointed attorney.

Because we conclude that Ledford's confession that he committed perjury during the preliminary hearing is the only evidence of his guilt, and because the confession was insufficiently corroborated, there is insufficient evidence to sustain the jury verdict. Therefore we reverse the judgment of conviction.

BACKGROUND

¶2 Ledford was an inmate at Waupun Correctional Institution (Waupun). The genesis of his perjury conviction lies in a June 3, 1996 assault against inmate Kelly Small by another inmate, Wahid Amin, in which Small was severely injured. Small informed prison authorities that Amin had assaulted him. Another inmate, Raul Rodriguez, began pressuring Small to retract this statement. Rodriguez enlisted Ledford, who was known as a "jailhouse lawyer," to prepare an "affidavit" for Small to sign stating that he did not know who had attacked him. Based on the information Rodriguez provided, Ledford drew up the document and gave it to Rodriguez.

¶3 On September 12, 1996, Ledford sent a letter to Richard Franklin, Waupun's security director, stating, "I have information of serious crimes in the process of being committed here at WCI by members of the Cobras, a Latino gang." Ledford's letter did not identify the crimes or individuals involved; instead, he expressed fear for his safety and asked Franklin to meet with him. Ledford met with Waupun Captain Michael Dittman on September 27, gave him a copy of the Small affidavit, and told him that he had written it at Rodriguez's request. Ledford also stated that he now believed the contents of the Small affidavit were false and that he had seen Rodriguez threatening Small in the shower area.

¶4 As a result of Ledford's statements, Rodriguez was charged with victim/witness intimidation contrary to WIS. STAT. §§ 940.42 and 940.43(3) (1999-2000)¹. At Rodriguez's preliminary hearing, Ledford testified that he twice witnessed Rodriguez pressuring Small to sign the affidavit while the inmates were in the shower and that Small appeared intimidated and said he would sign it. Before Rodriguez's trial, however, Ledford sent a notarized statement to Rodriguez's attorney confessing that he had falsely testified against Rodriguez at the preliminary hearing because Dittman had threatened to place him in segregation if he did not do so. The charges against Rodriguez were dismissed.

¶5 The State then charged Ledford with perjury contrary to WIS. STAT. § 946.31(1) based on his allegedly false statements at Rodriguez's preliminary hearing. The perjury charge was tried to a jury, where the only evidence of the alleged perjury was Ledford's written confession made to Rodriguez's attorney. The State attempted to corroborate his confession by Small's testimony at Ledford's trial and by reading a written statement from Stephen Toliver, another inmate who was present during a confrontation between Rodriguez and Small.²

¶6 The jury convicted Ledford of perjury. The circuit court sentenced him to eighteen months in prison and, as part of the judgment of conviction, required him to repay Dodge County for the cost of his court-appointed attorney. He appeals the judgment of conviction.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

² On appeal, the State concedes that Toliver's written statement constituted inadmissible hearsay. However, Ledford's counsel did not object to its introduction. Therefore, we do not reach the issue. *State v. Dean*, 105 Wis. 2d 390, 402, 314 N.W.2d 151, 157-58 (Ct. App. 1981).

DISCUSSION

Standard of Review.

¶7 In reviewing the sufficiency of the evidence to support a criminal conviction, we do not substitute our judgment for that of the trier of fact unless the evidence, viewed in the light most favorable to the State and the conviction, is so lacking in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Badker*, 2001 WI App 27, ¶9, 240 Wis. 2d 460, 469-70, 623 N.W.2d 142, 146-47. Whether there is evidence of any significant fact that is sufficient to corroborate a confession is a question of law. See *Triplett v. State*, 65 Wis. 2d 365, 372, 222 N.W.2d 689, 693 (1974); see also *State v. Verhasselt*, 83 Wis. 2d 647, 662, 266 N.W.2d 342, 349 (1978).

Sufficiency of the Evidence.

¶8 The conviction of a crime may not be based solely on the admission or confession of the accused. *Verhasselt*, 83 Wis. 2d at 661, 266 N.W.2d at 349. The supreme court has explained the test as follows:

All the elements of the crime do not have to be proved independent of an accused's confession; however, there must be some corroboration of the confession in order to support a conviction. Such corroboration is required in order to produce a confidence in the truth of the confession. The corroboration, however, can be far less than is necessary to establish the crime independent of the confession. If there is corroboration of any significant fact, that is sufficient under the Wisconsin test.

Holt v. State, 17 Wis. 2d 468, 480, 117 N.W.2d 626, 633 (1962). *Triplett* states this requirement as proof of "any significant fact." *Triplett*, 65 Wis. 2d at 372, 222 N.W.2d at 693. A fact is "significant" if it relates to the alleged crime. *Barth v. State*, 26 Wis. 2d 466, 469, 132 N.W.2d 578, 580 (1965). Therefore, a

significant fact is one that by independent proof makes it more likely than not that the confession is truthful.

¶9 On appeal, Ledford contends that his confession was uncorroborated and, as a result, there was insufficient evidence to sustain a conviction for perjury. In response, the State focuses on Ledford's preliminary hearing testimony that he witnessed two confrontations in the prison shower between Rodriguez and Small where Small was being pressured to sign the affidavit recanting his statement that Amin had attacked him. The State argues that Ledford's confession recanting what he testified he saw occur between Rodriguez and Small is corroborated by (1) Small's testimony at Ledford's perjury trial and (2) Toliver's written statement, which was also admitted at Ledford's trial.

¶10 At Rodriguez's preliminary hearing, Ledford testified in detail regarding two incidents that he claimed to have witnessed. He testified that Rodriguez confronted Small after he had drafted the affidavit for Small to sign.

Q. Do you recall ... anything happening in the shower regarding this affidavit after you had drafted it for Mr. Rodriguez?

A. Yeah ... between the time that I had done the affidavit and written the September 12th letter, going down to the shower. ... It's a large communal shower. Me and [Rodriguez] were on the left side. ... [W]e had the showers next to him. And he waved [Small] next to him. They got kind of real close in their face and said: "What's happening with the affidavit? Are you going to sign it? You know if you don't take care of business, me and my guys are going to take care of you. We're going to get you." So –

Q. What was Mr. Small's response?

A. He just kind of hung his head. It was a little scary because of what happened before. But he hung his head and he says, "Yeah, I'm going to do it. I'm going

to do it. Don't be sweatin' me about it, but I'll take care of it."

He then described a substantially similar incident that happened the next day. On cross-examination, he described Rodriguez's stance during the incident as "threatening and intimidating" and said that Small "seemed intimidated."

¶11 Eighteen months later, Ledford wrote to Rodriguez's attorney claiming that he had perjured himself at Rodriguez's preliminary hearing because Dittman had threatened to place him in segregation. At the attorney's request, Ledford prepared a notarized statement that described his activity as follows:

[T]he following portions of my testimony were falsified by myself at the Preliminary hearing: In essence, the entire testimony, from page 9, line 15 to the end of the transcript, is falsified.³ Its [sic] the basic scenario set up by Cpt. Dittmann. Cpt. Dittmann used and threatened me to go along because I was not only Raul Rodriguez's next door neighbor, but also because he had a hold over me. I was, and am, seriously diabetic, insulin dependent. He threatened to have me placed in the Lower Adjustment Segregation. He further said that being down there he would make sure I wouldn't receive the needed medical care, particularly because his wife, Beth Dittmann, was the Health Services Manager. Cpt. and Beth Dittmann had withheld treatment from me before.

¶12 Small's testimony at Ledford's perjury trial described several different incidents that took place in the shower. The first took place before Rodriguez had presented him with the affidavit.

Q. [W]ho were you first talking to in the shower?

A. Well, I was talking to ... Stevie Toliver.

Q. And when you were talking to him, were you talking to him about this affidavit or these people that were threatening you?

³ This range encompasses all of Ledford's testimony at Rodriguez's preliminary hearing.

....

A. No, at the time the affidavit wasn't even, you know, wasn't even in existence. I had just moved over there to south cell hall, and I was talking to Stevie. And he brought up the incident, and that's how it all just came out where Raul Rodriguez jumped out of the stall and started talking about the incident.

Q. Okay, so you weren't talking about an affidavit on that day in the shower?

A. No, not at that particular time, not when I first, that was the first day I saw Raul Rodriguez, when I was in the shower the first time.

Q. Now, were you swearing and cussing about Spanish Cobras and Raul at that time?

A. I wasn't really cussing. You know ... I might have used profanity once, but I was ... low on my ... conversation with Stevie. And so happened Raul Rodriguez was in the next stall, and he jumped out and he started threatening me, saying that I told on ... his folks or buddy or something, and that's how it all began.

Q. Now, if Steve Toliver said that you were saying things like, "fuck those Cobras, fuck this shit," and you were saying it loudly, would that be correct?

A. Oh, well, yeah. Yeah, I would have to say. I ain't going to say loudly but, you know, did I say exact? I ain't going to, but, you know, it wasn't loud. ... [I]t was loud enough for Raul Rodriguez next to me to hear it.

Q. But you weren't talking about an affidavit at that point?

A. No, ma'am.

....

Q. Now, when you were in the shower and talking to Steve Toliver, and Raul came out of the other stall, you did not see Mr. Ledford anyplace, correct?

A. Correct.

Q. Did you know of Mr. Ledford at that time of the shower incident?

A. No.

....

Q. ... Now, this shower incident in which Toliver was talking to you and you were swearing about the Cobras and Raul comes out of his stall, that only happened once, correct?

A. Yes.

It is this confrontation that the State relies on to support the charge of perjury because it occurred *before* the affidavit was drafted. However, Small also testified that Rodriguez had threatened him in the shower *after* he received the affidavit.

Q. [D]id he [Raul] ever threaten you in the shower with and ask you to sign this affidavit?

A. Yes....

Q. And I believe you said something to the effect that the affidavit did appear in the shower. ...

A. ... I received it through the rec, out on the rec field. I received it –

Q. You're not sure where else you received it?

A. I can't, I can't really say, but I know that I had a lot of run-ins in the shower.

¶13 Toliver's letter, which was read into evidence at the trial, also describes a confrontation in the shower. He wrote:

Kelly Felt he had to explain to me why he made the statement to Capt. Ditman [about his being attacked], which I told 'em he didn't have to explain....

At that time during the shower Kelly, became upset, loud, and was overheard by Raul, who in turn came out of his shower stall to confront Kelly, because after Kelly got loud and stated – Fuck all those dudes, they ain't shit, meaning the Spanish Cobra's, Raul wanted to attack Small

while in the shower; however I was able to neutralize that situation.

Several days later Small told me that he was asked to sign a statement saying Capt. Dittman made him lie.

Toliver's letter does not state that Ledford was not present in the shower when Rodriguez confronted Small. Ledford is simply not mentioned at all.

¶14 Ledford's testimony at the preliminary hearing described two incidents in which Rodriguez was pressuring Small to sign the affidavit. The State argues that the statements of both men confirm that Ledford did not see what he testified he saw at the preliminary hearing because he said he saw Rodriguez pressuring Small to sign an affidavit and that could not be true because the affidavit was not then in existence. We disagree, as Small's testimony describes only one of many confrontations between Small and Rodriguez in the shower. Because Ledford's preliminary hearing testimony could have been truthfully describing two later confrontations that Small said also occurred in the shower, his testimony about the earlier confrontation does not make it more likely than not that Ledford lied. Nothing in Small's trial testimony indicates that Ledford did not witness the later incidents. Similarly, Toliver's written statement mentions only a single incident, and it does not mention whether Ledford was present or not.

¶15 As a result, we conclude that neither Small's testimony nor Toliver's written statement make it more likely than not that Ledford's confession that he lied at the preliminary hearing is truthful. Accordingly, because Ledford's confession is the only evidence of his alleged perjury at Rodriguez's preliminary hearing, there is not sufficient evidence on which to convict him of perjury beyond a reasonable doubt. Therefore, we reverse the judgment of conviction.

Cost of Appointed Counsel.

¶16 The Sixth Amendment to the United States Constitution guarantees the assistance of counsel to the defendant in a criminal case.⁴ U.S. CONST. amend. VI. However, the Sixth Amendment right to counsel is not absolute. *State v. Cummings*, 199 Wis. 2d 721, 757, 546 N.W.2d 406, 420 (1996). A circuit court may find that a defendant has forfeited his or her right to counsel if the defendant repeatedly creates conflicts with or dismisses attorneys “solely to ‘interfere with the proper administration of criminal justice.’” *Id.* (quoting *Illinois v. Allen*, 397 U.S. 337, 343 (1970)). Furthermore, the circuit court may assess against the defendant attorney fees payable to the defense attorney by the county or the State. WIS. STAT. § 973.06(1)(e). However, such costs are taxable against the defendant only as part of the sentence. *State v. Grant*, 168 Wis. 2d 682, 683, 484 N.W.2d 370, 370 (Ct. App. 1992). We have reversed Ledford’s judgment of conviction, so the sentence, including the assessment of attorney fees against him, cannot stand.

CONCLUSION

¶17 Because we conclude that Ledford’s confession that he committed perjury during Rodriguez’s preliminary hearing is the only evidence of his guilt and because the confession was insufficiently corroborated, we reverse the judgment of conviction including the assessment of attorney fees.

⁴ The Sixth Amendment is applied to the states through the Fourteenth Amendment. *Gideon v. Wainwright*, 372 U.S. 335, 339-43 (1963). The Wisconsin Constitution provides an identical right to assistance of counsel. WIS. CONST. art. I, § 7; *State v. Klessig*, 211 Wis. 2d 194, 202-203, 564 N.W.2d 716, 719-20 (1997).

By the Court.—Judgment reversed.

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