

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 2, 2007

David R. Schanker
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. 2006AP990-CR

Cir. Ct. No. 2003CF1095

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY DWANE TURNER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waukesha County: JACQUELINE R. ERWIN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Anthony Dwane Turner appeals from the judgment of conviction entered against him for one count of threat to a judge as a repeat offender, and the order denying his motion for postconviction relief. He argues

that there was insufficient evidence to convict him. Because we conclude that the evidence was sufficient, we affirm.

¶2 Turner was charged with one count of threat to a judge for sending a threatening letter to the Honorable James R. Kieffer. He alleges that the evidence presented at his trial was insufficient to prove that he wrote and sent the letter. When considering a challenge to the sufficiency of the evidence, this court must affirm “if it finds that the jury, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Alles*, 106 Wis. 2d 368, 376, 316 N.W.2d 378 (1982).

[A]n appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. 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 even if it believes that the trier of fact should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990) (citations omitted).

¶3 Turner asserts that the evidence against him at trial was insufficient because the State did not present any evidence that anyone actually saw him pen the letter, and the State did not present any evidence, expert or otherwise, that the handwriting was Turner’s. He also challenges the trial court’s decision to allow into evidence a second letter, alleged to have been written by him about two weeks after the first letter was written.

¶4 We conclude, however, that there was sufficient evidence for a jury to find that Turner wrote the first letter. First, his name, inmate number, and

institutional address were on the envelope. Second, the contents of the letter supported the State's argument that he was the author because it referred to another case Turner had before a different judge. In addition, the second letter also supported the conviction. This second letter was picked up outside Turner's cell in a different facility. The officer who picked it up testified that the inmates put their unsealed mail outside their door, where officers then pick it up. This second letter also had Turner's name, inmate number, and institutional address. It also contained statements about Judge Kiefer.

¶15 The defense moved to exclude the second letter, arguing that it was irrelevant, cumulative, and prejudicial. The State responded that the letter was relevant to establish Turner's identity as the author of the first letter. The prosecutor argued: "One only need to look for a moment at the two letters to conclude they were almost certainly written by the same person." The circuit court concluded that the letter was relevant to establish Turner's identity. "A trial court's decision to admit or exclude evidence is a discretionary determination that will not be upset on appeal if it has 'a reasonable basis' and was made 'in accordance with accepted legal standards and in accordance with the facts of record.'" *State v. Jenkins*, 168 Wis. 2d 175, 186, 483 N.W.2d 262 (Ct. App. 1992) (citations omitted). We conclude that the circuit court properly exercised its discretion and the decision had a reasonable basis. Consequently, we affirm the judgment and order of the circuit court.

By the Court.—Judgment and order affirmed.

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

