

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 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. 2006AP2567-CR

Cir. Ct. No. 2004CF567

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM D. VAN BEEK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. William Van Beek raises a single issue on his appeal from convictions for burglary of a building, entry into a locked coin box and criminal damage to property. Van Beek contends the evidence was insufficient to support the jury verdicts. We reject his argument and affirm.

¶2 This case involves the burglary of the Blue Moon Saloon and Eatery. Vincent Steen, a tenant in the basement apartment of the Blue Moon, was watching television late at night when he heard the sound of tables being moved upstairs. Steen investigated, and when he came around the corner of the building, he saw a video poker machine on its side over the edge of a window with its bottom resting on the ground and a man with a mask banging on it. A van was parked near the video machine. Steen aimed a flashlight at the man, who said, “get the -- out of here.” The man then jumped into the van and took off. Steen described the van as a white full-size Chevy van with some writing on the side. Steen got a partial plate number as the van left the parking lot.

¶3 Steen reported to the sheriff’s department “the place ha[d] been broken into” and gave them a description of the vehicle, the partial plate number and a description of the man he saw. Steen testified at trial the man was wielding a ball peen hammer and he thought the compartment of the video machine was open.

¶4 Police officer Jake McAbee observed a white Chevy van coming south too fast for conditions. As it passed, McAbee identified the van as a commercial van with side lettering. As McAbee pursued the van, it ran three stop signs at speeds up to ninety miles-per-hour. McAbee lost sight of the van as it passed over a small hill. McAbee shined his spotlight into a subdivision and illuminated a white Chevy van with side lettering sitting in the dark. The van turned on its lights, drove out of the subdivision, and ran three more stop signs as McAbee pursued.

¶5 Another officer assisted McAbee and the van finally stopped. After Van Beek was arrested, a search of the van revealed a mini ball peen hammer, just

over 100 gambling cards and cash in Van Beek's possession consisting of twelve \$20 bills, six \$10 bills, six \$5 bills and six \$1 bills.

¶6 Van Beek insists Steen could not identify him, and further that the description of what he was wearing earlier did not match the description of what he was wearing when arrested. Van Beek also insists the State only presented circumstantial evidence that he was the man Steen saw beating on the video machine.

¶7 A reviewing court may overturn a verdict on grounds of insufficiency of evidence only if the trier of fact could not possibly have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). We review the evidence in the light most favorable to the verdict. The credibility of witnesses and the weight of the evidence are for the trier of fact. *Id.* at 503-04. “[T]he trier of fact is allowed to accept or reject inconsistent testimony.” *State v. Curiel*, 227 Wis. 2d 389, 421, 597 N.W.2d 697 (1999).

¶8 Here, the evidence was more than sufficient to support the verdicts and the elements of the crimes. The man Steen observed beating on the video machine yelled “get the -- out of here” when Steen confronted him and then jumped into the van and fled. The man sped out of the Blue Moon parking lot and Steen got a description of the vehicle and a partial plate number.

¶9 There can be little doubt that it was Van Beek who engaged in the high speed chase after Steen reported the crime. It is highly unlikely the police started chasing a different White Chevy van with side lettering and then stopped Van Beek. McAbee had the van in sight for the entire chase except for the moment he lost sight of it near the subdivision. But the van in the subdivision was

also a white Chevy van with side lettering and fled when McAbee shined a spotlight on it. It then proceeded to run three more stop signs at speeds up to ninety miles-per-hour. When searched, the van contained a ball peen hammer consistent with Steen's observation and cash in denominations consistent with the denominations accepted by the video machine cash box. This critically undercuts the identity argument Van Beek advances. The circumstantial evidence was sufficient.

¶10 Van Beek also argues the State did not prove he had the motive for the crimes. Motive is not an element of any crime at issue. *See State v. Berby*, 81 Wis. 2d 677, 687, 260 N.W.2d 798 (1978). Proof of motive does not establish guilt, nor want of it establish innocence. *State v. Janasky*, 258 Wis. 182, 183, 45 N.W.2d 78 (1950).

¶11 Finally, Van Beek argues that his opportunity to commit the crimes was called into serious question. However, he certainly had an opportunity to unlock the dining room window. Van Beek was the last patron in the Blue Moon on the night of the crimes. The bartender testified that as she was performing her closing tasks, Van Beek asked her how many people the dining room could hold. She told him he could go back and look. Van Beek was alone in the dining room and unobserved for about five minutes.

¶12 Van Beek's arguments appear to boil down to an assertion that perhaps Steen or some unknown van driver actually committed the crimes at the Blue Moon. We need not concern ourselves with evidence which might support other theories of the crime. We need only decide whether the theory accepted by the trier of fact is supported by sufficient evidence to sustain the verdict rendered.

Poellinger, 153 Wis. 2d at 507-08. The evidence in this case amply supports the verdicts.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

