

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 24, 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. 2006AP141-CR

Cir. Ct. No. 2004CF571

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TRAMAINE D. HUGHES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KAREN E. CHRISTENSON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Tramaine D. Hughes appeals from a judgment of conviction for two counts of first-degree sexual assault of a child. The issue is whether there was sufficient evidence to support the jury's guilty verdicts. We conclude that there was sufficient evidence to convict Hughes, and that his

challenges to the evidence and to the victim's credibility do not negate the sufficiency of the evidence. Therefore, we affirm.

¶2 A jury found Hughes guilty of two counts of first-degree sexual assault of a child, in violation of WIS. STAT. § 948.02(1) (2003-04).¹ The trial court imposed and stayed two concurrent ten-year sentences, comprised of two concurrent six- and four-year respective periods of initial confinement and extended supervision, in favor of two five-year terms of probation.

¶3 On appeal, Hughes challenges the sufficiency of the evidence. His principal challenges are the lack of physical evidence, and the victim's inconsistent statements regarding the incident.

¶4 To convict Hughes of first-degree sexual assault of a child, the State must prove, beyond a reasonable doubt, that “[Hughes] ha[d] sexual contact or sexual intercourse with a person who has not attained the age of 13 years.” WIS. STAT. § 948.02(1). Hughes does not dispute that the victim was not yet thirteen.

¶5 [I]n reviewing the sufficiency of the evidence to support a conviction, an 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.

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

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

¶6 The victim testified that she was walking along the street, a boy picked her up, they drove around, and ultimately he took her to the basement of a home. In the basement she had sexual intercourse multiple times with different men. She testified that she had oral and vaginal intercourse with “King James,” (Hughes) a man she identified from a photographic array who was wearing a LeBron James jersey. The victim was driven to a street corner where she borrowed a stranger’s cellular telephone; she telephoned her mother who picked her up and drove her to the police station and then to a Sexual Assault Treatment Center. Although the victim offered inconsistent statements to the police, she was able to locate the house where she claimed the assaults occurred, the police searched the basement, which matched the description the victim had given them, recovered numerous condoms, and identified the house as that of Hughes’s mother or aunt. At trial, the victim was cross-examined on her inconsistent statements previously given to the police and to her mother.

¶7 Hughes claims that there was no physical evidence implicating him because neither his nor the victim’s DNA was found on the same condom. First, physical evidence is not required for a sexual assault conviction. Second, the victim testified that she had oral and vaginal sexual intercourse with Hughes, and both her DNA and Hughes’s DNA were found on different condoms. The jury was told that only three of more than sixteen condoms seized from Hughes’s basement were tested because most of them were dried and stuck to each other. Consequently, there was sufficient evidence that this twelve-year-old victim was sexually assaulted at least twice by Hughes. *See* WIS. STAT. § 948.02(1); *Poellinger*, 153 Wis. 2d at 501.

¶8 Hughes challenged the victim's credibility. The victim's versions of this incident were inconsistent. The defense emphasized these inconsistencies during the victim's cross-examination at trial. Determining the credibility of the witnesses is exclusively within the province of the factfinder (here, the jury) unless the testimony is incredible as a matter of law. *See Johnson*, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). Moreover, it is the defendant's guilt that must be proven beyond a reasonable doubt, not the victim's credibility. *See State v. Owens*, 148 Wis. 2d 922, 934, 436 N.W.2d 869 (1989).

As this court has frequently stated, it is not our function to review questions as to weight of testimony and credibility of witnesses. These are matters to be determined by the trier of fact and their determination will not be disturbed where more than one reasonable inference can be drawn from credible evidence. Such deference to the trial court's determination of the credibility of witnesses is justified, the court has said, because of "... the superior opportunity of the trial court to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony."

Johnson, 95 Wis. 2d at 151-52 (citations omitted). Although there were inconsistencies in the testimony, the jury assessed those inconsistencies and determined the credibility of the victim and the other witnesses. The jury's verdicts were the results of reasonable inferences from the evidence adduced at trial. We conclude that there was sufficient credible evidence to support the jury's verdicts of guilt.

By the Court.—Judgment affirmed.

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

