

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 17, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-2982-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID N. BLACKBURN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
RICHARD J. DIETZ, Judge. *Affirmed.*

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

¶1 PER CURIAM. David Blackburn appeals a judgment convicting him of repeatedly sexually assaulting his stepdaughter. He argues that the State failed to present sufficient evidence to support the conviction. We reject that argument and affirm the judgment.

¶2 Blackburn's stepdaughter testified to repeated sexual assaults that began when she was three-years-old and continued until she was sixteen-years-old. Her testimony, if believed by the jury, is sufficient to establish all of the elements of this crime. Blackburn argues that her testimony was not credible for six reasons: (1) birthmarks that the stepdaughter testified would be visible only if Blackburn was completely unclothed could actually be seen when he was in his underwear, negating any adverse inference that might be drawn from her knowledge of the birthmarks; (2) the stepdaughter was treated for chlamydia at one point and Blackburn denied that he had ever been treated for that contagious disease, suggesting that he did not have intercourse with her during the time she was infected; (3) the stepdaughter did not tell her mother, grandmother or counselors about the assaults when given the chance, and her mother, brother and landlady did not observe any inappropriate behavior; (4) she chose to live with Blackburn and voluntarily gave guardianship of her two-year-old son to him even though she claimed to be afraid of him; (5) her diary included reference to at least one sexual experience but contained nothing regarding sexual contact with her stepfather; and (6) the stepdaughter had a motive for making false allegations because she was in trouble for stealing a car, showed problems with authority figures, had a violent temper and did not think before acting.

¶3 All of this evidence was presented to the jury and it nonetheless found the stepdaughter credible. The jury is the arbiter of the witnesses' credibility, and this court may not overturn the jury's credibility assessments unless they are inherently or patently incredible, or in conflict with the uniform course of nature or with fully established or conceded facts. *See Chapman v. State*, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975). The jury heard evidence that the stepdaughter's behavior is consistent with the behavior of sexual assault

victims. None of her testimony was patently incredible. We cannot say that the evidence, viewed most favorably to the State and conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *See State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

