

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 19, 2008

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. 2007AP1061-CR

Cir. Ct. No. 2003CF577

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHERYL A. SELLERS-BRURING N/K/A CHERYL A. SCHMIDT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for LaCrosse County:
DALE T. PASELL, Judge. *Affirmed.*

Before Higginbotham, P.J., Lundsten and Bridge, JJ.

¶1 PER CURIAM. Cheryl Sellers-Bruring appeals from a judgment convicting her of theft, as a party to a crime, criminal damage to property with a value over \$2500, as a party to a crime, and transfer of encumbered property with

intent to defraud. She argues that there was insufficient evidence to support two of the convictions. We affirm.

¶2 When we review the sufficiency of the evidence to support a conviction, we “may not substitute [our] 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.” *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). “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.” *Id.*

¶3 Sellers-Bruring first argues that there was insufficient evidence to support a conclusion that she had the requisite intent to commit criminal damage to property as a party to a crime. “Whoever intentionally causes damage to any physical property of another without the person’s consent” is guilty of criminal damage to property. WIS. STAT. § 943.01 (2005-06).¹ A person acts intentionally when he or she “either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result.” WIS. STAT. § 939.23(3).

¶4 The evidence shows that Sellers-Bruring was upset about a business dispute. She was directing a group of people who were helping her rapidly vacate

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

all of her equipment and belongings from her place of business. The evidence shows that the building sustained substantial damage over a period of many hours while Sellers-Bruring's things were being removed, that the damage included damaged carpet and flooring, damaged electrical wires and other damage, and that the total amount of damage far exceeded \$10,000.² The evidence also shows that Sellers-Bruring was at the property the entire time, except for a brief period of about fifteen minutes, so she was present as the damage was occurring. Under these circumstances, there was sufficient evidence for the trier of fact—here, the court—to conclude that Sellers-Bruring was aware that her conduct or the conduct of the people acting at her direction was practically certain to cause damage to the premises owned by the landlord. Thus, there was sufficient evidence to show that Sellers-Bruring had the requisite intent to commit criminal damage to property as a party to a crime.

¶5 Sellers-Bruring next argues that the evidence was insufficient to show that she had the requisite intent to commit the crime of concealing encumbered property with intent to defraud the bank. A loan officer at the River Bank testified that he called Sellers-Bruring multiple times and left messages in an effort to locate the encumbered property she had removed from her former place of business without permission, but that she did not return his phone calls. He testified that she also never came into the bank, but did send one fax acknowledging that she was moving the equipment to a new business location.

² The circuit court found that Sellers-Bruring believed that the internal walls in the building belonged to her because she put them up when she opened her business. Since Sellers-Bruring believed the walls belonged to her, she arguably lacked intent to damage the landlord's property when the walls were ripped down. Therefore, we have excluded the cost of damage to the walls in determining whether the damages exceeded \$2500, the threshold required by the statute for the crime.

Contrary to her assertion in the fax, however, the items were actually found in several different places and located only after a search warrant was executed. From this testimony, it can be reasonably inferred that Sellers-Bruring was intentionally concealing the property with an intent to defraud the bank. There was sufficient evidence to support the conviction on this charge.

By the Court.—Judgment affirmed.

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

