

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 3, 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. 2007AP1293-CR

Cir. Ct. No. 2006CF2091

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILLIAM MARTIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. William Martin appeals from a judgment of conviction for robbery. The issue is whether there was sufficient evidence to support the jury's guilty verdict, and to deny Martin's motion for a directed verdict of acquittal. We conclude that there was sufficient evidence in the State's

case-in-chief to support a guilty verdict against Martin for robbery, and that there was necessarily sufficient evidence to defeat Martin's motion for a directed verdict. Therefore, we affirm.

¶2 Angeline Opsahl, an employee of the Milwaukee Kickers Soccer Club, testified that on April 20, 2006, she saw Martin, whom she did not know, in the Milwaukee Kickers office behind the front desk. She testified that when she approached the front desk to assist Martin, "he asked [her] where the money was," and then grabbed her jacket with his left hand, pulling her towards him, and pressed something in his right hand against the back of her head, while continuing to demand money. Opsahl testified that she responded to Martin in an increasingly louder voice in the hope of attracting the attention of several other employees nearby who were at cubicles and not visible to Martin.

¶3 Employees Jerry Panek, Gustave M. Taalbi and William Holdmann were working at cubicles nearby and overheard the loud voices. Holdmann testified that he "could start to tell that there was some anxiety in [Opsahl]'s voice," that prompted him to stand up and then he "saw a man behind [Opsahl] with his arm around her neck forcing something into her back." Holdmann testified that when Martin saw him stand up, Martin told him to come towards him, which Holdmann did. Opsahl testified that Martin then turned her around, keeping her between Martin and Holdmann, but that Martin moved the object in his right hand to her lower back.

¶4 Holdmann testified in response to the prosecutor asking him:

Q: What if anything did the man say or do at that time?

A: He had demanded that I come towards him, and ... he told me to stop. He then said, show me your wallet. I pulled my wallet out of my back pocket. I

opened the billfold, showed him there was nothing in my wallet and put it back into my front pocket.

Q: Then what happened, sir?

A: [Martin] said, no, give me your wallet, so I took my wallet out of my front pocket and threw it short, basically, about halfway between us.

After more descriptive testimony regarding where Martin and Opsahl were, Holdmann continued:

[Martin] pushed [Opsahl] forward a little bit so he could reach [the wallet], and when he reached around [Opsahl] to pick up my wallet, he exposed what he had been holding in [Opsahl]'s back.

Q: And what did you observe that he was holding, sir?

A: I saw that it was – well, it was a gun but it had a red tip on it.

Q: And when you observed it had a red tip on it, what if anything did you say or do at that time?

A: At that time, nothing. I was still a little – I was still a little shaken. So, when I observed the gun, and what went through my mind was that the gun had a red tip, that's a toy gun.

Q: Okay. And then what happened, sir?

A: [Martin] picked up my wallet, put it in his pocket and put [Opsahl] again between us, was demanding [Opsahl]'s purse.

....

A: She had told [Martin] that her purse was down this hallway, so to my back, behind a locked door. He said, show me where it is, kept on pushing us down the hallway coming towards me, and then as they got closer to me, he told me to turn around and I started to walk down towards the door.

....

Q: You were backing up?

A: Yes.

Q: How far did you go down the corridor?

A: We went – we went all the way to the door.

Q: Okay. And what happened there, sir?

A: On the way back, as the shock of everything wore off of me, I asked [Martin], I said, sir, can I ask you a question? Why is the tip of your gun red?

And right about at that time was when I reached the doorknob and jiggled it and showed him that [room] was locked. By the time I turned around, he had released [Opsahl] and he was walking out of the office.

¶5 Martin was charged with the attempted armed robbery of Opsahl and the armed robbery of Holdmann. At the close of the State’s case-in-chief, Martin moved for dismissal. The trial court took the motion under advisement until after the verdict was returned.¹ The case was submitted to the jury on both charges, and on the lesser-included offense of robbery relating to Holdmann. The jury found Martin guilty only of the lesser-included offense of robbery relating to Holdmann. The trial court thereafter denied Martin’s motion for a directed verdict. The trial court imposed a fifteen-year sentence, comprised of ten- and five-year respective periods of initial confinement and extended supervision.

¶6 Martin appeals, challenging the sufficiency of the evidence, and the denial of his motion for a directed verdict. To avoid undue repetition, we consider these two related challenges together, analyzing the evidence in the State’s

¹ At that point, the motion was recharacterized as a motion for a directed verdict, and was also referred to as a motion for judgment notwithstanding the verdict. We use these three characterizations interchangeably, although we principally refer to the motion as seeking a directed verdict.

case-in-chief because only that evidence may be considered for deciding a motion for a directed verdict. *See State v. Duda*, 60 Wis. 2d 431, 438-39, 210 N.W.2d 763 (1973).

¶7 Robbery, in violation of WIS. STAT. § 943.32(1)(b) (2005-06), contains four elements that the State must prove beyond a reasonable doubt: (1) the victim, Holdmann, was the owner, or in possession, of the property in issue; (2) the defendant, Martin, took the property from the person or the presence of Holdmann; (3) Martin took the property with the intent to steal, or to compel Holdmann to acquiesce in its taking, without Holdmann's consent; and (4) that Martin threatened the imminent use of force against Holdmann to compel him to submit to Martin.² *See* WIS JI—CRIMINAL 1477 (Robbery by Threat of Force - § 943.32(1)(b)). The challenged element is the fourth, namely that Martin threatened the imminent use of force against Holdmann to compel him to submit, or to give his wallet, to Martin.

¶8 [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.

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

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

¶9 The State's evidence, namely from Holdmann but supported by Opsahl, Panek and Taalbi, was that Holdmann overheard a loud conversation, and perceived, from what he heard, anxiety in Opsahl's voice. When he stood, he saw a man (Martin) with his arm around Opsahl's neck, forcing something into her back. Martin then demanded that Holdmann approach him (while Martin held Opsahl between he and Holdmann), and show him his wallet. Holdmann obliged. As Holdmann was putting his empty wallet back into his pocket, Martin, still holding Opsahl against her will, directed Holdmann to give him (Martin) the wallet. Holdmann "threw [his wallet] short," and as Martin bent down to pick up Holdmann's wallet, Holdmann noticed, for the first time, that Martin's gun had a red tip. Holdmann testified that he was still "a little shaken," although he thought that the gun might have been a toy because of the red tip. Martin then directed Opsahl and Holdmann to get Opsahl's purse, and Holdmann complied as he backed down the hall to the door of the room where Opsahl kept her purse. When Holdmann testified that the shock had "wor[n] off," he then asked Martin why his gun had a red tip. Martin then attempted to flee and Holdmann overpowered him until the police arrived.

¶10 There was sufficient evidence and reasonable inferences from that evidence for the jury to find guilt beyond a reasonable doubt that Martin threatened the imminent use of force against Holdmann. Holdmann complied with Martin's directives, while watching Martin with one arm around Opsahl's neck and the other forcing something in her back, to the point of relinquishing his wallet when Martin directed him to do so, even backing toward the door to the room where Opsahl kept her purse after he suspected Martin may not have had a

real gun. We conclude that there was sufficient evidence to support the jury's guilty verdict.

¶11 We limited our review of the sufficiency of the evidence to that presented during the State's case-in-chief to also dispose of Martin's related claim that he was entitled to a directed verdict of acquittal. For the same reasons as previously addressed, the trial court properly denied Martin's motion for a directed verdict.

By the Court.—Judgment affirmed.

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

