

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 30, 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. 2007AP1579-CR

STATE OF WISCONSIN

Cir. Ct. Nos. 2006CF1630
2006CF1651

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRIAN DODDS,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Milwaukee County:
GLENN H. YAMAHIRO, Judge. *Affirmed.*

Before Curley, P.J., Kessler, J., and Daniel L. LaRocque, Reserve
Judge.

¶1 PER CURIAM. Brian Dodds was charged with misdemeanor counts of battery and disorderly conduct, with use of a dangerous weapon. In a separate case that was consolidated for trial, Dodds was charged with felony bail

jumping and possession of a firearm by a felon. A jury found Dodds guilty on all counts. On appeal, Dodds contends that there was insufficient evidence to support the jury's findings on the weapons-related charges. We disagree and affirm the judgments of conviction.

¶2 The four charges against Dodds arise from two separate incidents that occurred during the evening of March 22, 2006 and the early morning of March 23, 2006. At the time of the incidents, Dodds was on bail relative to a separate criminal case, and a condition of bail required Dodds to refrain from committing other crimes. According to the criminal complaint and the testimony at trial, Milwaukee police were dispatched to investigate a domestic disturbance. When police arrived, they spoke to Frances Bell, who told them that Dodds had battered her and struck her in the face with a handgun. The investigating officer told the jury that he observed marks on Bell's face that looked as if she had been hit with a handgun, but the officer acknowledged that pictures of Bell's face taken that night were not consistent with his observation. Bell told police that Dodds battered her because he was intoxicated and angry that she would not let him use her car. Bell stated that after Dodds hit her several times with his hand, he went to the attic where he kept guns, and he came back with a handgun. She told police that he first pointed the gun at her and then used it to strike her in the face. Police did not recover a handgun from the home, however. Bell testified that Dodds had left the house shortly after the emergency call to police had been made.

¶3 Approximately six hours later, police responded to another call to the same address, this time from Bell's thirteen-year-old son. According to Bell, Dodds had returned to the home and began hitting her in the face as she lay on the couch. When police searched the house, they found Dodds hiding in the attic under a pile of clothes.

¶4 On appeal, Dodds argues that insufficient credible evidence was submitted to support the jury determinations on the charges of his being a felon in possession of a firearm and having been armed relative to the disorderly conduct offense. Specifically, he argues there was insufficient evidence because no weapon was recovered, and there was “no substantive corroborating evidence, no other witnesses to the alleged possession, no evidence of receipts for the purchase of a handgun or bullets or casings.” He also argues that Bell’s testimony was contradictory and her claim that Dodds had hit her with the handgun was unreliable.

¶5 The parties agree on the standard of review we must apply. A reviewing court accepts the findings 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 reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). This standard arises from the fact that “the jury has the ‘great advantage of being present at the trial’ and is thus in the best position to weigh and sift conflicting testimony and attribute weight to those nonverbal attributes of the witnesses which are often persuasive indicia of guilt or innocence.” *State v. Allbaugh*, 148 Wis. 2d 807, 809, 436 N.W.2d 898 (Ct. App. 1989) (citation omitted).

¶6 We conclude that Dodds’ contentions regarding the lack of credible evidence are without merit. The jury heard Bell’s testimony about the handgun, including a description of the gun and Dodds’ use of it. Bell also told the jury that she knew Dodds kept guns in the attic of their home and that Dodds retrieved the handgun from the attic. Bell also testified that Dodds left their home after the handgun assault and when he returned he did not have the weapon. The jury also heard the testimony of a Milwaukee police officer who observed markings on

Bell's face that he believed could have been made by a gun barrel and trigger assembly.

¶7 Dodds also contends that Bell's recantation of her accusations at his preliminary examination rendered her trial testimony incredible. We disagree. Bell was questioned at trial about her earlier recantation, and she told the jury that she had recanted because she was scared of Dodds and he had told her to lie at the preliminary examination. It was the jury's function to determine whether Bell's testimony regarding Dodds' actions and her recantation was credible.

¶8 The evidence presented at trial was not incredible as a matter of law and was sufficient to support Dodds' convictions on the weapons-related charges.

By the Court.—Judgments affirmed.

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

