COURT OF APPEALS
DECISION
DATED AND FILED

November 25, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2430-CR **Cir. Ct. No. 2006CF2015**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LARRY DARNELL REDMOND,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Larry Darnell Redmond appeals from a corrected judgment of conviction for kidnapping and false imprisonment, and from a postconviction order denying his motion for sentence modification. The issues are whether there was sufficient evidence to support the guilty verdicts, and whether

the trial court actually relied on inaccurate information when it sentenced Redmond. We conclude that there was sufficient credible evidence to support both guilty verdicts, and that Redmond has not shown that the trial court actually relied on the inaccuracy in his prior record when it imposed sentence. Therefore, we affirm.

¶2 Redmond was charged with kidnapping, false imprisonment, and the attempted second-degree sexual assault of a child for an April 10, 2006 incident during which he abducted a fifteen-year-old girl to his home, where he confined her in a closet. A jury found him guilty of kidnapping and false imprisonment, but was unable to reach a unanimous verdict on the attempted sexual assault charge. The trial court imposed a sixteen-year sentence for the kidnapping, comprised of twelve- and four-year respective periods of initial confinement and extended supervision, and a four-year concurrent sentence for the false imprisonment, comprised of two-year periods of initial confinement and extended supervision. Redmond moved for sentence modification, claiming that he was sentenced on inaccurate information, and that his mother was in poor health. The trial court denied the motion. Redmond appeals, challenging the sufficiency of the evidence, and seeking resentencing.[1]

¶3 Redmond contends that there was insufficient credible evidence to support the guilty verdicts for kidnapping and false imprisonment. Specifically, Redmond challenges the testimony of the victim, who he contends was not credible. To convict the defendant of kidnapping, the State must prove beyond a reasonable doubt, that the defendant: (1) transported the victim from one place to

[1] On appeal, Redmond does not raise the issue of his mother's health.

another; (2) with imminent force or the threat of imminent force; (3) without the victim's consent; and (4) with the intent to secretly confine the victim. *See* WIS. STAT. § 940.31(1)(a) (2005-06); WIS JI—CRIMINAL 1280 (2006).[2] To convict the defendant of false imprisonment, the State must prove beyond a reasonable doubt, that the defendant: (1) confined the victim; (2) intentionally; (3) without the victim's consent; (4) without any lawful authority for the confinement; and (5) knew that the victim did not consent to the confinement and that the defendant knew that he or she had no legal authority for the confinement. *See* WIS. STAT. § 940.30; WIS JI—CRIMINAL 1275 (2006).

¶4 The victim testified to the elements of each offense. Additionally, two witnesses testified, who had viewed the kidnapping from across the street. Desiree Kerner testified that she saw a man grab a girl from a car and then saw the girl being dragged from the car. She heard the assailant call the victim by name, telling her to "shut up." Kerner then asked someone to call the police. Larry Horst testified that he heard someone yell that her sister was being kidnapped and he saw a man "pulling [the victim] up the alley," while the victim was "[t]rying to get away." The victim's testimony, corroborated by Kerner and Horst, was sufficient to prove kidnapping. Milwaukee Police Detective Steve Wells testified that he was dispatched to look for the victim of an abduction. Once at the defendant's house, he searched until Redmond finally led him to a closet with tires propped against the door, where the detective found the victim, acting and looking "terrified." The victim's testimony, corroborated by Detective Wells, was sufficient to prove false imprisonment.

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

> ¶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.

State v. Poellinger, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990) (citation omitted). Credibility determinations are within the fact-finder's province unless the evidence is incredible as a matter of law. *See* ***Johnson v. Merta***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). As long as there is sufficient evidence to convict, it is the jury's obligation, not that of the appellate court, to weigh the evidence and reconcile inconsistencies in the testimony. *See* ***Poellinger***, 153 Wis. 2d at 506-07.

¶6 The evidence is sufficient to support the convictions for kidnapping and false imprisonment. As noted, Redmond does not challenge the sufficiency of the evidence, as much as he challenges the credibility of the victim. We reject this challenge. First, the victim's testimony is corroborated on both offenses. Second, matters of credibility are peculiarly within the jury's province. *See* ***Johnson***, 95 Wis. 2d at 151-52. The victim's testimony was not incredible as a matter of law, and, although unnecessary, her testimony was corroborated. There was sufficient credible evidence to support the guilty verdicts.

¶7 Redmond moved for resentencing, contending that he was sentenced on inaccurate information, namely that instead of being convicted in 1992 of burglary and shoplifting, those charges had been dismissed.

> "A defendant who requests resentencing due to the [trial] court's use of inaccurate information at the sentencing hearing 'must show both that the information was inaccurate and that the court actually relied on the inaccurate information in the sentencing.'" Once actual reliance on inaccurate information is shown, the burden then shifts to the state to prove the error was harmless.

State v. Tiepelman, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1 (citations omitted).

¶8 At sentencing, the prosecutor mentioned that Redmond's criminal history included "a burglary count from 1992 that was amended to a misdemeanor." This information, however, was inaccurate because that offense was, in fact, dismissed. Defense counsel did not correct this inaccurate information at sentencing and characterized Redmond's prior history as "miniscule." The trial court considered Redmond's criminal history at sentencing. It said:

> I know the defendant believes that the victim was lying about the whole thing, but as I pointed out, there's more evidence that's been presented than simply the victim's statements. These are some very serious offenses. What is also disconcerting is I look at the defendant's character. He has a prior conviction for battery in 1987. That's a crime of violence and a crime against person. On April 10, 2006 he was again involved in violence and a crime against person. Additionally on his record he has the two prior bail jumpings and a retail theft. Again, they're quite dated except to the extent that that violence has reoccurred again on April 10, 2006.

Redmond acknowledges that the trial court did not specifically address the 1992 burglary in its sentencing remarks.

¶9 In its postconviction order denying this claim, the trial court stated that it

> considered only [Redmond's] prior conviction for battery from 1987, two prior bail jumpings, and a retail theft. It placed no weight whatsoever on a 1992 burglary purportedly amended to a misdemeanor, and did not consider it at all for purposes of sentencing. Given that the court did not rely on inaccurate information at the time of sentencing, it denies the defendant's motion.

¶10 Although the inaccurate information was presented at sentencing, it was not emphasized by the prosecutor, who characterized Redmond's record as "[not] noteworthy." The trial court did not mention the 1992 burglary in its sentencing remarks, and explained in its postconviction order that it did not rely on that inaccurate information, although at sentencing it did consider a retail theft that it characterized as "quite dated," and then focused on Redmond's past conduct involving violence, which did not include the retail theft. The trial court's focus at sentencing was about Redmond's actions involving "violen[ce]," although it credited him with having "a good reputation," and found the kidnapping and false imprisonment to be conduct that was "very much out of character." Redmond has not persuaded us that the trial court actually relied on this inaccurate information when it imposed sentence; it did not mention the 1992 burglary, and was focused on prior acts involving violence.

By the Court.—Judgment and order affirmed.

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