

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 6, 2009

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. 2008AP839-CR

Cir. Ct. No. 2006CF699

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JASON L. EDMONSON,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Winnebago County:
WILLIAM H. CARVER, Judge. *Reversed and cause remanded.*

Before Brown, C.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. The State appeals from an order vacating the jury's verdict finding Jason Edmonson guilty of false imprisonment during an incident in which he battered his fiancée. The only issue on appeal is whether the evidence was sufficient to sustain the jury's verdict on that charge despite the not-guilty

verdict on two counts of second-degree sexual assault and disorderly conduct. We conclude it was and reverse the order vacating the verdict and remand for sentencing on the false imprisonment conviction.

¶2 Whether the evidence presented to a jury is sufficient to sustain its verdict is a question of law. *State v. Booker*, 2006 WI 79, ¶12, 292 Wis. 2d 43, 717 N.W.2d 676. A jury’s verdict must not be reversed on the basis of insufficient evidence “unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The evidence must be viewed most favorably to the State and the conviction. *Id.* It is the function of the jury to decide issues of credibility, to weigh the evidence, and to resolve conflicts in the testimony. *Id.* at 506.

¶3 The five elements of false imprisonment require proof that the victim was confined or restrained, that such confinement or restraint was intentional, that the victim was confined or restrained without consent, that the defendant had no lawful authority to confine or restrain the victim, and that the defendant knew the victim did not consent and there was no lawful authority to confine or restrain the victim. WIS JI—CRIMINAL 1275. As the jury was instructed at Edmonson’s trial, the confinement or restraint element is satisfied by evidence that the victim was deprived of the freedom of movement or compelled to remain in a place the victim did not wish to remain. *See id.*

¶4 Edmonson’s fiancée testified at trial that she and Edmonson fought one night at a bar and she did not return to their shared residence until 5:00 p.m. the next day. Edmonson was not home and she locked herself into the bedroom

that night. She was woken the next morning by Edmonson's knocking on her bedroom door. As she tried to get dressed, Edmonson pushed her back on the bed repeatedly. After she used the bathroom and returned to the bedroom, Edmonson pushed her onto the bed, pinned her against the headboard, and choked her. At another point during the three-hour encounter, she managed to get out of the bedroom and into the hallway only to have Edmonson grab her ankles and pull her back into the bedroom. She indicated that she sat in a chair in the bedroom because "he wouldn't let me leave." In his trial testimony, Edmonson acknowledged that his fiancée attempted to leave the room and that he blocked her.

¶5 This evidence is sufficient to satisfy all five elements of false imprisonment. More than once during the entire encounter Edmonson prevented his fiancée from changing her location. His own testimony acknowledges that he did so knowingly.

¶6 Edmonson argues that the only disputed element is consent and that because the jury rejected the victim's testimony that two acts of sexual conduct were without her consent, it follows that her testimony that she was confined or restrained without her consent was incredible. However, a jury, as ultimate arbiter of credibility, has the power to accept one portion of a witness's testimony and reject another portion; a jury can find that a witness is partially truthful and partially untruthful. *O'Connell v. Schrader*, 145 Wis. 2d 554, 557, 427 N.W.2d 152 (Ct. App. 1988). We defer to the jury's function of weighing and sifting conflicting testimony in part because of the jury's ability to give weight to nonverbal attributes of the witnesses. *See State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989).

¶7 Further, as the State points out, the not guilty verdicts on the sexual assault charges have no bearing on the sufficiency of the evidence to sustain the false imprisonment guilty verdict.

It has been universally held that logical consistency in the verdict as between the several counts in a criminal information is not required. The verdict will be upheld despite the fact that the counts of which the defendant was convicted cannot be logically reconciled with the counts of which the defendant was acquitted.

State v. Mills, 62 Wis. 2d 186, 191, 214 N.W.2d 456 (1974) (footnote omitted).

¶8 The trial court vacated the verdict because it deemed the acts of restraint to have occurred during the battery. That the conduct satisfying the elements of false imprisonment occurred incident to another crime does not mean the additional crime of false imprisonment did not occur. See *State v. Simpson*, 118 Wis. 2d 454, 455, 347 N.W.2d 920 (Ct. App. 1984). “It is the law of this state the same criminal act may constitute different crimes with similar but not identical elements.” *Harris v. State*, 78 Wis. 2d 357, 365, 254 N.W.2d 291 (1977); WIS. STAT. § 939.65 (2007-08).¹

By the Court.—Order reversed and cause remanded.

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

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

