

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 19, 2002

Cornelia G. Clark
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. 01-2117-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00 CM 4609

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SUKHBINDER SINGH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

¶1 FINE, J. Sukhbinder Singh appeals from a judgment entered on jury verdict convicting him of disorderly conduct. See WIS. STAT. § 947.01. He claims there was insufficient evidence to support the jury's verdict, and, as an included argument, contends that the trial court erred: 1) in not granting his motions to dismiss the charge before the jury started its deliberations; and 2) in not

granting his post-verdict motion for a judgment notwithstanding the verdict. We affirm.

I.

¶2 This case arises out of a confrontation between Singh and a Milwaukee County Transit bus driver. The bus driver testified that when Singh boarded his bus Singh flashed what appeared to be a pass or a transfer but that the bus driver could not see it clearly. When the bus driver asked Singh to come forward so he could see if the pass or transfer was valid, Singh started to curse him. Specifically, the bus driver testified that Singh called him “a black son-of-a-bitch.” According to the bus driver, Singh also said that the bus driver “needed to go back to Africa” and that the “only good thing for all black people to do is to be a bus driver or go clean hotels.” The bus driver also testified that other people on the bus were starting to react to what Singh was saying, but that the bus driver told them to “leave [Singh] alone” and that he, the bus driver, could “handle it.”

¶3 Ultimately, the bus driver called his company and the police arrived. One of the police officers testified that Singh was angry and “very agitated and very animated”:

He was moving very animated with his arms clenched. First when he was taken off the bus, he continued to pace back and forth. He had very much trouble obeying our [the police officers'] commands to calm down and stay in one position. As a matter of fact, we also radioed for the back-up squad.

The officers arrested Singh.

¶4 Singh testified and denied that he had been abusive. Rather, he accused the bus driver of abusing him, saying to Singh: “Keep your mouth shut,

you sucker.” In response to a question asked by his trial lawyer, Singh denied calling the bus driver a “nigger”; indeed, he denied having ever heard the word. He also denied that he was upset when he was speaking to the police officers. As noted, the jury found him guilty of disorderly conduct.

II.

¶5 A person is guilty of disorderly conduct if he or she, “in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance.” WIS. STAT. § 947.01. As we have seen, all of Singh’s claims on appeal revolve around his contention that there was insufficient evidence to support the jury verdict.

¶6 A jury verdict will be upheld unless, “considering all credible evidence and reasonable inferences therefrom in the light most favorable” to the verdict, “there is no credible evidence to sustain” it. WIS. STAT. RULE 805.14(1) (made applicable to criminal cases by WIS. STAT. § 972.11(1)).

[A]n 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, 757–758 (1990) (citation omitted). Moreover, we must give weight to a trial court’s approval, as here, of a verdict challenged on insufficiency-of-evidence grounds. *Upton v.*

Tatro, 68 Wis. 2d 562, 570, 229 N.W.2d 691, 695 (1975). In this case, the issue was credibility; the jury was asked to weigh the testimony of the bus driver and the police officer against that of Singh. The jury did not believe Singh, and there was nothing inherently incredible about the bus driver's version of the confrontation. Accordingly, we affirm. See *State v. Lossman*, 118 Wis. 2d 526, 540–541, 348 N.W.2d 159, 166 (1984) (jury determines credibility of witnesses).

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

