

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 19, 2010

A. John Voelker
Acting 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. 2009AP2753-CR

Cir. Ct. No. 2008CF137

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

VINCENT G. TANNER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed.*

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

¶1 PER CURIAM. Vincent G. Tanner appeals a judgment convicting him of burglary and an order denying his motion for postconviction relief. He argues that there was insufficient evidence to support the verdict and that the circuit court misused its discretion in sentencing him. We affirm.

¶2 Tanner first contends that there was insufficient evidence to show that he had the intent to steal. A defendant’s intent must usually be proved by circumstantial evidence “because intention is a mental process that necessarily must be proved through inferences drawn from the defendant’s statements and actions.” *Muller v. State*, 94 Wis. 2d 450, 473, 289 N.W.2d 570, 582 (1980). When reviewing the sufficiency of the evidence, we look at whether “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.” *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 1018, 669 N.W.2d 762, 769 (citation omitted). “Reasonable inferences drawn from the evidence can support a [jury’s verdict] and, if more than one reasonable inference can be drawn from the evidence, the inference [that] supports [the verdict] is the one that must be adopted.” *Bautista v. State*, 53 Wis. 2d 218, 223, 191 N.W.2d 725, 728 (1971).

¶3 We agree with the State that “[t]he circumstances surrounding Tanner’s admittedly intentional, nonconsensual entry into the [building were] sufficient to allow the jury to infer that he entered with intent to steal.” The evidence at trial showed that Tanner entered the building through a shattered window in the middle of the night, after first removing security bars on the exterior of the window. The police found his blood in the office and reception area, two areas likely to contain valuable items like computers. Tanner testified that he broke into the building to spray paint the inside in order to cause damage because he was angry at an old girlfriend who worked there, but he did not adequately explain why he did not just spray paint the exterior of the building. His explanation was also suspect because the incident he claimed to be upset about with the old girlfriend occurred more than thirteen months earlier and he had been

living nearby and had not taken action for the perceived wrong in the interim. Tanner's testimony was also suspect because he claimed to have help from several young females in entering the building, who were going to help him spray paint, but the defense did not call any of them to corroborate this story. In sum, a reasonable jury could have concluded that Tanner's version of why he entered the building and what he intended to do there was not credible. The jury could reasonably infer that Tanner intended to steal because he broke into the building in the middle of the night and was in areas of the building that might contain computers and other valuable items. There was sufficient evidence to support the jury's conclusion that Tanner had the intent to steal.

¶4 Tanner next argues that the circuit court misused its discretion when it sentenced him to ten years of imprisonment, with six years of initial confinement and four years of extended supervision, because it did not explain why a sentence near the maximum was justified. "Circuit courts are required to specify the objectives of the sentence on the record." *State v. Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d 535, 556, 678 N.W.2d 197, 207. "These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." *Id.*, 2004 WI 42, ¶40, 270 Wis. 2d at 556–557, 678 N.W.2d at 207. "In each case, the sentence imposed shall 'call for the minimum amount of custody or confinement [that] is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant'" *Id.*, 2004 WI 42, ¶44, 270 Wis. 2d at 560, 678 N.W.2d at 208.

¶5 The circuit court discussed the reasons for its sentence at length. The circuit court emphasized that Tanner had a very extensive prior record, which included over fifteen convictions, and observed that Tanner was not willing to

change his ways, making him dangerous to the community because he would do whatever it took to get what he wanted. The circuit court found Tanner's initial explanation to authorities for his extensive cuts, which he claimed had been inflicted by three men who had jumped him, to be an aggravating circumstance because this false allegation could have led to the arrest of innocent people. We conclude that the circuit court's explanation for imposing a sentence that was eighty percent of the maximum was more than sufficient. We reject Tanner's argument that the circuit court misused its sentencing discretion.

By the Court.—Judgment and order affirmed.

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

