COURT OF APPEALS
DECISION
DATED AND FILED

May 1, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2812-CR **Cir. Ct. No. 01-CF-692**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY R. LUEDKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: MICHAEL S. FISHER, Judge. *Affirmed*.

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Jeffrey Luedke appeals from a judgment convicting him of robbery and from an order denying his postconviction motion to withdraw his plea. The issue is whether Luedke should be allowed to withdraw his plea because there was not a sufficient factual basis for the conviction. We affirm.

¶2 "Withdrawal of a plea following sentencing is not allowed unless it is necessary to correct a manifest injustice." ***State v. Smith***, 202 Wis. 2d 21, 25, 549 N.W.2d 232 (1996). A manifest injustice occurs when the circuit court fails "to establish a sufficient factual basis that the defendant committed the offense to which he or she pleads." ***Id.*** Whether there is a sufficient factual basis for a crime is an issue committed to the circuit court's discretion "and will not be overturned unless it is clearly erroneous." ***Id.***

¶3 Luedke contends there is not a sufficient factual basis to support one of the elements of robbery, that he acted *forcibly* in taking the property. Luedke contends that any force he used against the security guard who attempted to detain him after he exited the store occurred after he had already completed the crime of retail theft and, as such, "was a separate incident" unrelated to the retail theft, rather than an element of robbery. We reject Luedke's analysis.

¶4 The incident from which the robbery charge arose was one continuous flow of events during which Luedke applied force in attempting to take items from the store. The complaint alleges—and Luedke admitted as true when he entered his plea—that he took shirts from the store and walked to the door without paying for them. When the security guard approached Luedke just outside the store entrance, Luedke initially returned to the store but, after a scuffle with the guard in which he reached for a knife encased on his belt, once again ran from the store after throwing down some, but not all, of the stolen items.[1] These facts are sufficient to establish that Luedke used force when he took items from the store.

[1] The circuit court relied on the facts alleged in the complaint in accepting the plea. The testimony at the preliminary hearing varied in some aspects not important to our analysis.

Whether Luedke could have been charged with retail theft for leaving the store with the stolen items and another charge, such as battery, for his scuffle with the guard, does not negate the factual basis for the robbery charge. *See* ***State v. Karpinski***, 92 Wis. 2d 599, 611, 285 N.W.2d 729 (1979) (when a prosecutor is faced with a course of conduct that can be charged under more than one statute, the legislature has expressly authorized the prosecutor to proceed under any or all applicable statutes). The circuit court did not misuse its discretion in finding that there was a factual basis for the robbery conviction.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2001-02).