

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 10, 2011

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. 2010AP2039-CR

Cir. Ct. No. 2008CF4747

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEPHEN L. WOODS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS R. CIMPL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Stephen L. Woods appeals the judgment entered after a jury convicted him of one count of armed robbery contrary to WIS. STAT.

§ 943.32(1)(b) & (2) (2005-06).¹ Woods argues that there is insufficient evidence to support his conviction. We disagree and affirm.

I. BACKGROUND

¶2 At approximately 4:30 a.m. on May 20, 2006, a convenience store employee saw a man bring a box of white Tic Tacs to the store's counter. As the employee went to scan the Tic Tacs, the man displayed a handgun and told her to empty the cash register drawer. The employee gave the man the money, at which point he told her to get on the floor. When the employee heard the man leave the store, she called 9-1-1. She later realized that the box of white Tic Tacs was no longer on the counter.

¶3 Police arrived at the store shortly after the incident and found an unopened box of Tic Tacs in the parking lot, approximately thirty feet from the entrance. Other than the Tic Tac box and two five-dollar bills that police found just outside the store's entrance, the parking lot was relatively clean and free of debris.

¶4 Although a fingerprint was found on the Tic Tac box, the State did not match the print to Woods until two years later. Upon doing so, the police presented the store employee working on the night of the robbery with a photo display. During trial the employee testified that she selected one of the photographs because "there were certain features about [the individual's] face that were familiar to me, the jaw[]line specifically, expression in his face, just brought

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

back like [that] feeling of the robbery again.” She described feeling terror upon seeing the photograph and explained it was a gut reaction. She further testified that she could not, however, say with one hundred percent certainty that the individual in the photograph—who turned out to be Woods—was the robber.

¶5 During Woods’s trial in 2009, the employee testified that Woods looked different in court than when she saw him in May of 2006 and in the photograph as part of the display. The employee further testified that seeing Woods in person did not give her the same feeling of terror she experienced when she saw his photograph. She acknowledged having doubts as to whether Woods was the person responsible for the robbery.

¶6 Despite the employee’s doubts, the jury convicted Woods of armed robbery. He now appeals.

II. ANALYSIS

¶7 The outcome of Woods’s challenge to the sufficiency of the evidence is controlled by this court’s standard of review. When we review the sufficiency of the evidence to support a jury’s verdict, the test is not whether this court is convinced of the defendant’s guilt beyond a reasonable doubt, but whether a jury, acting reasonably, could be so convinced by evidence that it had a right to believe and accept as true. *See State v. Poellinger*, 153 Wis. 2d 493, 503-04, 451 N.W.2d 752 (1990). The credibility of the witnesses and the weight of the evidence are for the jury. *Id.* at 504.

¶8 We view the evidence in the light most favorable to the verdict and, if more than one reasonable inference can be drawn from the evidence, we must accept the inference necessarily drawn by the jury. *Id.* The jury’s verdict will be

reversed ““only if, viewing the evidence most favorably to the [S]tate and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt.”” *State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation and emphasis omitted).

¶9 Convictions may be supported solely by circumstantial evidence. *Poellinger*, 153 Wis. 2d at 501. In some cases, circumstantial evidence may be “stronger and more satisfactory than direct evidence.” *Id.* The standard of review is the same whether the conviction relies upon direct or circumstantial evidence. *Id.* at 503.

¶10 In his appellate brief, Woods relies on *Borum v. United States*, 380 F.2d 595 (D.C. Cir. 1967), and its progeny, for the proposition that when a conviction is based on fingerprint evidence, the State must prove, in essence, that the fingerprints found at the scene could only have been put there when the crime was committed. Woods suggests that the application of that proposition to these facts compels a reversal. We disagree. First, *Borum* is not controlling precedent. See *State v. Gary M.B.*, 2004 WI 33, ¶17, 270 Wis. 2d 62, 676 N.W.2d 475 (“Wisconsin courts are not bound by decisions of the United States Supreme Court when federal law does not govern the dispute.”); *State v. Black*, 188 Wis. 2d 639, 647 n.2, 526 N.W.2d 132 (1994) (Wisconsin courts are “bound on the subject of federal law only by the pronouncements of the United States Supreme Court.”). Fingerprint evidence is treated like any other item of circumstantial evidence. Second, fingerprint evidence was not the only evidence linking Woods to the crime. He was also identified by the employee who was working at the time of the robbery.

¶11 Woods discredits the employee's tentative identification of him. He points out that the employee viewed a photo display more than two years after the robbery and was never one hundred percent certain of her identification of him. Woods further references the employee's acknowledged doubts during trial that Woods was the person who committed the robbery. According to Woods, such a tentative identification is not sufficient to support a conviction.

¶12 Woods's criticisms notwithstanding, whether the employee could make an accurate identification of Woods in light of the time-lapse and other circumstances of the robbery was a question for the jury to resolve in determining the employee's credibility. See *State v. O'Brien*, 223 Wis. 2d 303, 326, 588 N.W.2d 8 (1999) ("It is within the province of the jury to decide issues of credibility, to weigh the evidence and resolve conflicts in the testimony."). The jury was free to believe the employee's testimony indicating that Woods was the robber. That alone would have been sufficient to support the verdict. In addition, there was evidence that Woods's fingerprint was found on a Tic Tac box found outside of the convenience store, consistent with the employee's testimony about the events leading up to the robbery. This evidence leads to the reasonable inference, apparently adopted by the jury, that Woods handled the Tic Tac box while committing the armed robbery and dropped it in the parking lot as he fled.

¶13 Woods presents other ways his fingerprint could have ended up on the Tic Tac box;² however, as stated above, we view the evidence in the light most

² In this regard, Woods writes:

(continued)

favorable to the verdict and, if more than one reasonable inference can be drawn from the evidence, we must accept the inference necessarily drawn by the jury. *See Poellinger*, 153 Wis. 2d at 504. Although Woods argues that the jury's inference of guilt was unreasonable, we are not convinced. Instead, we conclude that there was ample evidence to support Woods's conviction.

By the Court.—Judgment affirmed.

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

[T]hese prints were found outside a store on a Tic Tac box. This location was accessible to any customer of the store or member of the public. Likewise, the store had a display of Tic Tacs inside from which any customer or member of the public could take or handle boxes of Tic Tacs. The fingerprint could have been left on the Tic Tac box on the day of the robbery, or a year or two earlier....

... [T]he possibility that Mr. Woods may have touched the Tic Tacs, publicly accessible merchandise, at some time in the years preceding the robbery, is not only possible but reasonable.

We agree that this is a possibility but disagree that it is a reasonable one. *Cf. State v. Scott*, 2000 WI App 51, ¶15, 234 Wis. 2d 129, 608 N.W.2d 753.

