

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 26, 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. 2010AP794-CR

Cir. Ct. No. 2008CF197

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD J. MYREN, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for La Crosse County: DALE T. PASELL, Judge. *Affirmed.*

Before Lundsten, Sherman and Blanchard, JJ.

¶1 PER CURIAM. Ronald Myren appeals a judgment of conviction and an order denying his motion for postconviction relief. We affirm.

¶2 Myren was convicted of one count of child enticement. He argues that the evidence was insufficient. We affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

¶3 In discussing the elements of child enticement, both parties rely on pattern jury instructions or case law. However, we review sufficiency of the evidence against the instructions that the jury was actually given, not against instructions that could have been given. In this case, the jury was instructed that the crime had three elements: first, that Myren attempted to cause the complainant to go into a vehicle; second, that Myren attempted to cause her to go into a vehicle with intent to have sexual contact with her, sexual contact then being defined as intentional touching of intimate parts for the purpose of sexual arousal or gratification or sexually degrading or humiliating her; and, third, that the complainant was under the age of eighteen.

¶4 Myren argues that, as to the first element, the most the State's evidence shows is that he asked the complainant to come "to" his vehicle, not "into" his vehicle. Myren's argument fails because he focuses solely on what he literally asked for, rather than on what reasonable inferences could be drawn about what he was attempting to "cause," which is the term used in the instruction. Even if it is true that he asked her only to come "to" the car, it is a reasonable inference that that was a first step in a larger effort to entice her into the car, thus showing that his intent was to cause her to enter the car.

¶5 As to the second element, Myren argues that the evidence was insufficient to show an intent to have sexual contact with the complainant. Myren focuses on the absence of sexual language or conduct on his part. However, he does not suggest any other motive that could reasonably be inferred from his attempt to cause the complainant to enter his vehicle. Based on the complainant's testimony, in which an adult male in a car followed a fifteen-year-old female pedestrian for thirty minutes, whistled at her, and stopped her twice to speak to her, an intent to have sexual contact was a reasonable inference.

¶6 Myren also argues that the circuit court erred by admitting testimony of two witnesses who testified that Myren engaged in similar behavior with them when they were children. Myren argues that the circuit court erred in its application of the three-part test for admission of other acts evidence described in *State v. Sullivan*, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998).

¶7 Myren argues that the other acts were not admitted for proper purposes because they lacked sufficient indicators that his conduct in those cases was sexually motivated. We disagree. Sexual motivation was a reasonable inference from those situations, for essentially the same reasons it was in the present case.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

