

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 18, 2004**

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. 03-2319**

Cir. Ct. Nos. 02JV000141A  
02JV000141B  
02JV000141D  
02JV000141E

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN THE INTEREST OF LARENZO M.C.,  
A PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**LARENZO M.C.,**

**RESPONDENT-APPELLANT.**

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APPEAL from orders of the circuit court for Milwaukee County:  
TIMOTHY M. WITKOWIAK, Judge. *Affirmed.*

¶1 CURLEY, J.<sup>1</sup> Lorenzo M.C. appeals from a dispositional order after the trial court adjudged him delinquent of one count of retail theft, as a party

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

to a crime, one count of battery, and one count of disorderly conduct, contrary to WIS. STAT. §§ 943.50(1m), 939.05, 940.19(1), and 947.01 (2001-2002).<sup>2</sup> He also appeals from an order lifting a previously ordered stay of execution. Lorenzo contends that there was insufficient evidence to support the trial court's findings that he committed the crimes listed above. Because we conclude there was sufficient evidence to support all three charges, we affirm.

### I. BACKGROUND.

¶2 On Saturday, September 28, 2002, Jovan Williams, while working as a loss control assistant for K-Mart, observed an individual conceal items in a backpack and leave the store without paying. Williams testified that he followed the individual, who appeared to be female because of how she was dressed, out of the store, apprehended her, recovered the backpack, and removed the stolen property. He maintained custody of the suspect until the Milwaukee Police arrived.

¶3 Milwaukee Police Officer Terence Wilson testified that when he arrived at the store, Williams had an individual in custody for retail theft. He stated that the person in custody was dressed as a female and identified "herself" as Angela Ring, giving a false date of birth and address. She later admitted that "she" was not really "Angela Ring," and was subsequently identified as Lorenzo M.C. Officer Wilson further testified that the suspect told him that he stole the items because the other girls told him to do so.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶4 Lorenzo was placed in non-secure custody at St. Charles, a Milwaukee County Detention Center, to be held until his court appearance on the following Monday. On Sunday, September 29, 2002, Lorenzo left St. Charles and walked to Children's Hospital, where he called for a cab.

¶5 Jaspal Singh was the taxicab driver dispatched to Children's Hospital. He testified that he picked up what appeared to be a female and took "her" to the requested destination. Singh testified that Lorenzo gave him \$3.00 and said "she" would go into the house and get the rest of the \$18.00 fare from "her" mother. Singh asked Lorenzo how he would know where "she" was going and "she" replied, "if you don't believe me, just follow me." Lorenzo went up to the house and knocked, but no one came out. Singh testified that Lorenzo then asked him to drive to an aunt's house on the next block.<sup>3</sup> He drove to the house and followed Lorenzo into an alley where Lorenzo told him to wait. Singh told Lorenzo he wanted his money and Lorenzo told him to come into the fenced area where "she" was standing.

¶6 Once Singh entered the fenced area, a pit bull ran up and bit him on the thigh. Lorenzo had been holding the rope that controlled the dog, but he released it, allowing the dog to run up and bite Singh. Singh testified that Lorenzo

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<sup>3</sup> There is a discrepancy amongst the testimonies of Singh, Lorenzo, and the police officer regarding where Lorenzo was taken in the cab. Singh testified that he first took Lorenzo to the mother's house and then to an aunt's house. Lorenzo first testified that he was dropped at his mom's house but only his uncle was home. On cross-examination, Lorenzo then admitted that he was first taken to a friend's house where no one was home and then to his mother's house. Lorenzo also stated during cross-examination that his mother did not answer the front door, and Singh drove around to the alley when Lorenzo walked around the house to enter through the back. Officer Kumbier testified that Lorenzo only told him about being taken to one house. However, regardless of whose house Lorenzo went to, all three witnesses agree that Singh was bitten by Lorenzo's uncle's pit bull.

released the rope after “she” asked him if he still wanted his money and he said “yes.” Lorenzo then pulled the dog in and repeated the question, but did not release the dog a second time because Singh answered “no” and proceeded to leave the fenced area. Singh then drove to a police station, showed several police officers his dog bite, and took them to the house where the incident occurred.

¶7 Milwaukee Police Officer David Kumbier reported that he arrived at the location of the dog bite incident and identified the suspect who had released the dog as Lorenzo. While he was able to identify Lorenzo in court, he did state that he had first believed Lorenzo was female because of how he was dressed. Officer Kumbier testified that after he read Lorenzo his rights, Lorenzo told him that he had taken a cab from Children’s Hospital and the driver followed him into the fenced area without permission. Lorenzo said that he and the cab driver were arguing over the fare and Lorenzo was scared the cab driver might attack him. Lorenzo claimed that during the argument, the pit bull became excited. He said he tried to hold the dog back, but when it tried to bite him, he let it go, and the dog bit the cab driver. Lorenzo told Officer Kumbier that he pulled the pit bull off the cab driver and noticed the injury to the cab driver’s leg.

¶8 On Monday, September 30, 2002, Lorenzo made an initial appearance for the charge of retail theft. In October, Lorenzo pled not guilty to the retail theft charge and was ordered to remain in secure detention. In November, Lorenzo was additionally charged with battery and disorderly conduct in connection with the dog bite incident.

¶9 On November 21, 2002, Lorenzo was tried before the court on the retail theft charge. Williams and Officer Wilson testified as to the events surrounding the retail theft. Lorenzo also testified on his own behalf. He stated

that he went to K-Mart with several girlfriends and had no knowledge that the other girls were going to commit retail theft. Lorenzo testified that the backpack belonged to one of the other girls, and that he did not remove price tags or take any clothing. The trial court found Lorenzo delinquent of the retail theft charge.

¶10 On January 16, 2003, Lorenzo was tried before the court on the battery and disorderly conduct charges from the dog bite incident. Singh and Officer Kumbier testified as to the events surrounding the dog bite incident. Lorenzo also testified on his own behalf. He testified that he had a twenty-dollar bill and that Singh said he did not have change. Lorenzo maintained that instead of giving him the large bill, he gave Singh the exact \$16.00 he asked for.<sup>4</sup> He testified that after he paid the driver, Singh asked him for a “blow job.” Lorenzo then exited the car and Singh followed him without his permission. Lorenzo testified that the dog bit his left hand while he was trying to hold it back, and that is why he let the dog go and it bit Singh.

¶11 After finding Lorenzo’s version of the events incredible, the trial court found him delinquent of battery and disorderly conduct, and the matter was set for disposition. Lorenzo was subsequently placed at Lincoln Hills, a secured correctional facility, for one year. He now appeals.

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<sup>4</sup> Lorenzo originally testified that Singh asked for \$16.75 even though the meter said \$18.75, and that he did not give Singh the twenty-dollar bill because the driver had no change. Lorenzo was then asked how much money he gave Singh, and Lorenzo replied, “the \$16.00 Singh asked for.” Lorenzo later testified, during cross-examination, that he did give Singh the twenty-dollar bill and although the meter said \$18.75, Lorenzo received \$4.00 in change back and left the cab. Singh testified that the cab fare was \$18.00, and Lorenzo only gave him \$3.00. Officer Kumbier testified, however, that Singh told him the cab fare was \$16.75 and Lorenzo gave him \$5.50.

## II. ANALYSIS.

¶12 Lorenzo insists that there was insufficient evidence to support the trial court's finding that he committed the crime of retail theft. He contends that Williams and Officer Wilson believed they were apprehending a female, and he argues that "Officer Williams" testified that he did not even recognize Lorenzo in court as the person he apprehended. He also insists that no one actually saw him take the items from the K-Mart store.

¶13 Lorenzo also argues that there was insufficient evidence to support the trial court's finding that he committed the crimes of battery and disorderly conduct. He contends that there was inconsistent evidence presented concerning the cab fare, and that there "was no contrary evidence presented to refute Lorenzo's testimony that he had inadvertently let his dog loose after being bit in the hand." He argues that since he was dressed as a female, "it would not be unreasonable for Lorenzo to be suspect of Singh's motives when he followed him out of the car." Lorenzo insists that there was "simply no evidence" to support the trial court's finding that he intentionally let the dog loose. This court disagrees with both contentions.

¶14 "The test for sufficiency of the evidence to convict is highly deferential. We may not reverse unless the evidence is so insufficient in probative value and force that as a matter of law, no reasonable fact finder could have determined guilt beyond a reasonable doubt." *State v. Kimbrough*, 2001 WI App 138, ¶12, 246 Wis. 2d 648, 630 N.W.2d 752. Indeed, "[o]nly when the evidence is inherently or patently incredible will [the court] substitute [its] judgment for that of the factfinder." *State v. Saunders*, 196 Wis.2d 45, 54, 538 N.W.2d 546 (Ct. App. 1995) (citation omitted).

¶15 As the supreme court reiterated in *State v. Poellinger*, 153 Wis. 2d 493, 451 N.W.2d 752 (1990):

The burden of proof is upon the state to prove every essential element of the crime charged beyond reasonable doubt. The test is not whether this court or any of the members thereof are convinced [of the defendant's guilt] beyond a reasonable doubt, but whether this court can conclude the trier of facts could, acting reasonably, be so convinced by the evidence it had a right to believe and accept as true. ... The credibility of the witnesses and the weight of the evidence is for the trier of fact. In reviewing the evidence to challenge a finding of fact, we view the evidence in the light most favorable to the finding. Reasonable inferences drawn from the evidence can support a finding of fact and, if more than one reasonable inference can be drawn from the evidence, the inference which supports the finding is the one that must be adopted.

*Id.* at 503-04 (citations omitted) (alterations and omissions in original). An appellate court gives deference to a trial court's findings because of "the superior opportunity of the trial court to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony." *Kleinstick v. Daleidon*, 71 Wis.2d 432, 442, 238 N.W.2d 714 (1976). Further:

It is the function of the trier of fact, and not this court, to resolve questions as to the weight of testimony and the credibility of witnesses. This principle recognizes the trial court's ability to assess each witness's demeanor and the overall persuasiveness of his or her testimony in a way that an appellate court, relying solely on a written transcript, cannot. Thus, we consider the trial judge to be the "ultimate arbiter of the credibility of a witness," and will uphold a trial court's determination of credibility unless that determination goes against the great weight and clear preponderance of the evidence.

*State v. Hughes*, 2000 WI 24, ¶2 n.1, 233 Wis. 2d 280, 607 N.W.2d 621 (citations omitted).

¶16 This court cannot conclude, as urged by Lorenzo, that there are no reasonable inferences that can be drawn from the evidence to support the trial court's finding that he committed retail theft. Lorenzo alleges that Williams and Officer Wilson believed they were apprehending a female, contends that "Officer Williams" did not recognize Lorenzo in court as the person he apprehended,<sup>5</sup> and presumably argues that there is insufficient evidence to establish that he was the individual involved. Williams testified, however, that he personally saw an individual, whom he thought to be female, take the items; followed the individual to a car; apprehended "her"; and maintained custody of the individual until he turned that person over to the Milwaukee Police Department. Officer Wilson testified that he was dispatched to the store, where he met Williams and the detained individual. While Williams was unable to identify Lorenzo in court, presumably because he was no longer dressed as a female, Wilson did determine at K-Mart that the detained individual was Lorenzo and was able to identify him in court.

¶17 Lorenzo also argues that no one actually saw him take the items that were allegedly removed from the K-Mart store; however, Williams testified, and then repeated again during cross-examination, that he physically observed the individual he apprehended "conceal items into a back pack, [and then] exit the store," without paying for the merchandise. During redirect examination, Officer Wilson also testified that Williams told him that he had observed Lorenzo take items from the store.

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<sup>5</sup> Williams, the employee, was not able to identify Lorenzo in court. The transcripts indicate, however, that Office Wilson *was* able to identify Lorenzo in court. This court presumes that by mistakenly writing "Officer Williams," Lorenzo was in fact referring to Jovan Williams, the employee.



¶18 It is the job of the trial court to weigh any inconsistencies in the evidence and the credibility of the witnesses. The trial court found that

the juvenile [was] delinquent for the charge of retail theft, primarily based on the testimony of the officer, indicating that the juvenile was, in fact, the person who took these items. And the testimony of Mr. Williams who indicated that that was the specific person that he saw take those items.

Lorenzo has failed to establish that any of the evidence was patently or inherently incredible. Accordingly, as there is credible evidence to support the finding, this court rejects Lorenzo's challenge to the sufficiency of the evidence regarding the retail theft charge.

¶19 In regard to the battery and disorderly conduct charges, the trial court was presented with some inconsistent evidence. Yet, this court cannot conclude, as urged by Lorenzo, that there are no reasonable inferences that can be drawn from the evidence to support a finding of guilt.

¶20 In finding that Lorenzo committed the offenses, the trial court implicitly found Singh to be a credible witness and believed his testimony, notwithstanding the inconsistencies: "To me, it is pretty clear that Mr. Singh is a victim." The inconsistencies in Singh's testimony do not automatically render him an incredible witness. "Even though there [may] be glaring discrepancies in the testimony of a witness at trial, or between his trial testimony and his previous statements, that fact in itself does not result in concluding as a matter of law that the witness is wholly incredible." *Ruiz v. State*, 75 Wis. 2d 230, 232, 249 N.W.2d 277 (1977). Indeed, "[i]t is only where no finder of fact could believe the testimony that we would be impelled to conclude that it was incredible as a matter of law." *Id.* at 235 (citation omitted). This court simply cannot conclude that no

finder of fact could believe Singh's testimony. Furthermore, the trial court found that "L[a]renzo['s] [] testimony [was] so incredible."

¶21 The trial court weighed and considered the credibility of all of the evidence, and returned a finding of guilt. Accordingly, as there is credible evidence to support the trial court's determination of guilt, this court similarly rejects Lorenzo's challenge to the sufficiency of the evidence regarding the charges of battery and disorderly conduct. Accordingly, this court affirms.

*By the Court.*—Orders affirmed.

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

