

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 9, 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. 03-2375-CR

Cir. Ct. No. 03CM000301

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DENNIS L. MASON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Dennis L. Mason appeals his jury trial conviction for misdemeanor theft, contrary to WIS. STAT. § 943.20(1)(a) & (3)(a),² with a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f).

² All references to the Wisconsin statutes are to the 2001-02 version unless otherwise noted.

habitual criminality enhancer, pursuant to WIS. STAT. § 939.62. He contends that the evidence was insufficient to prove him guilty. This court disagrees and, therefore, affirms.

¶2 Trial testimony established that on January 7, 2003, Angela Rewolinski's wallet was taken from her purse at her place of employment, Professional Account Management in Milwaukee. Rewolinski had left her purse in her office when she went to get a soda. Shortly thereafter, Luz Delapaz, a co-worker, returned from her smoking break.

¶3 The office was a secure one, requiring the use of a code for entry. When Delapaz reentered, she was followed by another co-worker and a man who, she testified, "didn't belong there." Delapaz alerted her supervisor of the stranger's presence, but no one saw him there again. When Rewolinski returned, she realized that her wallet was missing. She reported the theft to a 911 operator, and Delapaz provided the operator with a description of the stranger.

¶4 Rewolinski then went home and canceled her credit cards. While at home, she received a phone call from an "agitated" man who claimed to have found her wallet. He promised Rewolinski her wallet if she agreed to meet him and "make it worth [his] while." Rewolinski agreed, but when she reported this call to the police, the dispatcher convinced her not to go. In response to Rewolinski's failure to meet him, the man called her again, berating her with profane language.

¶5 Later that evening, Milwaukee police responded to a disturbance at Sinai Hospital. When they arrived, Mason was being detained by hospital security. Rewolinski's wallet was found on Mason, and he was arrested and charged with the theft.

¶6 At trial, the State primarily relied on Mason's possession of Rewolinski's wallet and on Delapaz's testimony. Though Delapaz had failed to identify Mason in a photographic lineup the day after the theft, she identified him in the courtroom. She testified that she was absolutely certain that Mason was the stranger who entered the office with her at the time of the crime. The defense presented no evidence though defense counsel, in closing argument, suggested a number of possibilities that, he argued, established reasonable doubt. After deliberating for an hour, the jury found Mason guilty.

¶7 Mason contends that the evidence was insufficient. Reviewing a challenge to the sufficiency of evidence supporting a conviction, this court may not reverse unless the evidence, viewed most favorably to the State and the conviction, is so lacking in probative value that no reasonable jury could have found guilt beyond a reasonable doubt. See *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990); *State v. Block*, 222 Wis. 2d 586, 596, 587 N.W.2d 914 (Ct. App. 1998). This court's role is not to sit as the trier of fact and review the sufficiency of the evidence *de novo*. See *Poellinger*, 153 Wis. 2d at 505-06. Instead, this court must affirm the conviction "[i]f any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt . . . even if it believes that the trier of fact should not have found guilt based on the evidence before it." *Id.* at 507.

¶8 Essentially, Mason asks this court to sit as the trier of fact and assess Delapaz's credibility *de novo*; this court cannot do so. The jury heard and saw Delapaz and considered defense counsel's arguments about her credibility. Apparently, the jury found Delapaz's testimony credible; that was the jury's call. See *id.* at 506-07.

¶9 Finally, this court disagrees with Mason’s argument that the evidence “supported only a suspicion that [he] took the wallet.” The jury received evidence that Mason was at the scene when the crime occurred, though he had no business being there, and that he possessed Rewolinski’s wallet seven hours later. Therefore, the jury could have reasonably concluded that Mason stole Rewolinski’s wallet. Inferences supported by circumstantial evidence are entitled to the same deference by the reviewing court as inferences supported by direct evidence. *See id.* at 503-05. Accordingly, this court affirms.

By the Court.—Judgment affirmed.

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

