

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 9, 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. 2011AP399-CR

Cir. Ct. No. 2010CM368

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES R. DOBIE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: MARK J. MCGINNIS, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ James Dobie appeals from a judgment of conviction for disorderly conduct with domestic abuse and repeater enhancers. He argues the evidence was insufficient to support the jury’s verdict. We affirm.

BACKGROUND

¶2 Dobie was charged with disorderly conduct after allegedly biting his girlfriend, Daytana Ronek. At a jury trial, Ronek testified that she has been in a relationship with Dobie for the past three-and-one-half years and she loves him. She explained that on the evening of March 20, 2010, she and Dobie had gone to a nearby bar. After the bar closed, they remained in a parking lot, talking to some friends. Ronek refused to give an unknown female a cigarette. According to Ronek, the female then grabbed Ronek and bit her. The female’s friend pulled the female into a car and they left.

¶3 Ronek explained she was frantic and told Dobie what happened. Dobie told her to calm down, and they decided to walk home. When they arrived home, Ronek stated she was “still pretty frantic” and “was being pretty loud.” She explained Dobie “was calmly telling me that I need to calm down.” Ronek and Dobie went to bed. After going to bed, Ronek thought she heard knocking on the door, but did not hear any “police” announcement. She explained that she “thought it was somebody following us home from the bar or the chick coming back.”

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶4 Ronek testified when the police entered her apartment later that night, she told the officer that an unknown female bit her at the bar. She never said “[Dobie] hit me or bit me.” Rather, she said “she had bit me.” Ronek also explained the police took photographs of her bite mark and “[her] face saying that I had a black eye but I naturally have bags under my eyes that are bad ... plus, that night I was crying so I’m sure they were poufy.” She testified Dobie never had physical contact with her.

¶5 Officer Matthew Ollwerther testified that on the morning of March 21, he was dispatched to an apartment complex to investigate a possible domestic disturbance. He explained an anonymous caller had reported “a lot of shouting, possibly some screaming, [and] some items being thrown around.” Ollwerther said that when he arrived at the apartment door, he heard voices speaking inside the apartment. When he knocked on the door and announced “Police, come to the door,” the voices stopped. Ollwerther and officer Katherine Vanderheiden knocked on the door continuously for longer than twenty minutes. When they stopped knocking, “the voices became audible again.” He explained that the officers were able to obtain a key to the apartment and entered the apartment.

¶6 Once inside the apartment, Ollwerther interviewed Ronek and observed a bite mark on her arm. When he questioned her about the mark, “she was very uncooperative, either not answering directly or providing answers that were intentionally vague.” Ollwerther explained that at first Ronek stated she did not know who bit her, but that her story eventually changed into “the bite mark was received [from] someone other than [Dobie] at a friend’s place. However, she could not specify as to where it did occur.”

¶7 Vanderheiden testified that when she arrived at the apartment, she could “hear there [were] people inside talking.” She heard Ronek say “‘You fucking’ either ‘bit’ or ‘hit’ me, and it hurt.” Vanderheiden was certain Ronek used the pronoun “you.” When Vanderheiden entered the apartment, she observed a bite mark on Ronek’s arm and what appeared to be a fresh bruise forming around her eye. Vanderheiden questioned Ronek about her bite mark, and Ronek told Vanderheiden she did not remember how she received the mark because she had blacked out from drinking. The jury found Dobie guilty of disorderly conduct.

DISCUSSION

¶8 On appeal, Dobie argues the evidence introduced at trial was insufficient to support his disorderly conduct conviction. When reviewing a sufficiency of the evidence claim, we may not substitute our judgment for that of the jury unless the evidence, viewed most favorably to the State and the conviction, is so lacking in probative value and force that no jury, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). If any possibility exists that the jury could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, we may not overturn a verdict even if we believe that the jury should not have found guilt based on the evidence before it. *Id.*

¶9 To convict Dobie of disorderly conduct, the State needed to prove: (1) Dobie engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct; and (2) Dobie’s conduct, under the

circumstances as they then existed, tended to cause or provoke a disturbance. *See* WIS. STAT. § 947.01; *see also* WIS JI—CRIMINAL 1900 (2009).

¶10 We conclude the evidence presented at trial sufficiently supports Dobie’s disorderly conduct conviction. First, Vanderheiden overheard Ronek state “‘You fucking’ either ‘bit’ or ‘hit’ me, and it hurt,” and was certain Ronek used the pronoun “you.” Dobie was the only other individual in the apartment. When Vanderheiden made contact with Ronek, she observed Ronek had a bite mark on her arm and a bruise developing around her eye. Although Ronek explained Dobie did not cause any injuries, credibility determinations are in the province of the jury. *See State v. Fettig*, 172 Wis. 2d 428, 448, 493 N.W.2d 254 (Ct. App. 1992). The evidence sufficiently supports the jury’s determination Dobie engaged in violent or abusive conduct.

¶11 Second, an anonymous individual reported a female screaming inside the apartment, which caused police to be dispatched. Ronek corroborated the anonymous individual’s report when she testified that after receiving the bite mark, she was crying, loud, and frantic while inside the apartment. Consequently, the evidence sufficiently supports the jury’s determination that Dobie’s act of biting Ronek tended to cause or provoke a disturbance.

By the Court.—Judgment affirmed.

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

