

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 14, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2815-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANTONIO FORD,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Affirmed.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Antonio Ford appeals from a judgment of conviction on three counts of armed robbery, contrary to §§ 943.32(1)(b) and (2) and 939.05, STATS. The issues are whether there was sufficient evidence to support the conviction and whether Ford should have a new trial in the interest of justice under § 752.35, STATS. We affirm.

Ford argues there was insufficient evidence to convict him on any of the three counts. The convictions must be affirmed unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990). It is for the trier of fact to determine the weight and credibility of testimony. *State v. Daniels*, 117 Wis.2d 9, 17, 343 N.W.2d 411, 415 (Ct. App. 1983).

We conclude the evidence was sufficient on all three counts. Count three concerned a robbery at a restaurant. Restaurant employees who were accosted during the robbery identified Ford as the robber at trial. The other counts concerned robberies at a service station and a grocery store. Eyewitness testimony linked a certain vehicle with the grocery store robbery. That vehicle was later stopped, and the occupant of the vehicle gave statements to police incriminating himself and Ford in the grocery and service station robberies. This is sufficient evidence upon which to find guilt. It is irrelevant that there was also evidence the jury might have used to reject the incriminating identification and statement. The jury was also not bound to accept Ford's alibi.

In a supplemental *pro se* brief, Ford argues that he is entitled to a new trial in the interest of justice under § 752.35, STATS., on the ground that justice miscarried. To order a new trial on that ground, we must first find a substantial probability of a different result on retrial. *Vollmer v. Luety*, 156 Wis.2d 1, 16, 456 N.W.2d 797, 805 (1990). Ford argues that the evidence in support of the convictions is inadequate, particularly in view of recent studies regarding eyewitness identification and the self-serving nature of his accomplice's statements. We do not believe there is a substantial probability of a different result on retrial. We therefore decline to grant the requested retrial.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.