

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

February 27, 1996

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, 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. 95-1439-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**DAWN DOBBS,**

**Defendant-Appellant,**

**UNDREA D. HARRIS,**

**Defendant.**

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN A. FRANKE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Dawn Marie Dobbs appeals from a judgment entered after a jury found her guilty of one count of first-degree intentional homicide, party to a crime, contrary to §§ 940.01(1) and 939.05, STATS. Dobbs claims: (1) the trial court erred in admitting her statement because it was

involuntarily made; and (2) the evidence was insufficient to sustain the conviction. Because the trial court did not err in admitting the statement and because the evidence is sufficient to sustain the conviction, we affirm.

## I. BACKGROUND

On February 12, 1994, Dobbs was arrested for conspiracy to commit first-degree intentional homicide of her live-in boyfriend, Ray Thomas. Dobbs claims she repeatedly asked for a lawyer and that the only reason she signed a waiver form was because she was concerned about her children. She also claims that the officers who took her statement told her that if she did not talk to them, she would never see her children again.

The officers who took her statement, however, testified that Dobbs never asked for an attorney, that they did not make any threats regarding her children or any other subject, that they advised Dobbs of her *Miranda*<sup>1</sup> rights and that she voluntarily waived her rights and wanted to give a statement. The trial court found the officers more credible and determined that Dobbs intelligently, knowingly and voluntarily waived her *Miranda* rights and voluntarily gave a statement. Hence, the statement was admitted at the trial. The jury convicted Dobbs. She now appeals.

## II. DISCUSSION

### A. Statement.

Dobbs claims that she did not make a knowing, intelligent and voluntary waiver of her rights and that she was coerced into giving a statement. We will not overturn the trial court's findings of fact unless they are clearly erroneous. See § 805.17(2), STATS. The ultimate question of whether Dobbs waived her rights and whether the statement was coerced, however, are

---

<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

questions of law that we independently review. *State v. Lee*, 122 Wis.2d 266, 274, 362 N.W.2d 149, 152 (1985).

The trial court made specific findings relevant to this issue: that Dobbs did not ask for a lawyer; that prior to making her statement, she was advised of her rights; that she understood those rights and that she knowingly, voluntarily, and intelligently waived those rights; that she voluntarily gave her statement; and that she was not forced or coerced into making a statement by the police. Our review of the record shows there is ample support for these findings and, therefore, they are not clearly erroneous. They were based essentially on a credibility determination, which is always left to the trial court. *Gehr v. City of Sheboygan*, 81 Wis.2d 117, 122, 260 N.W.2d 30, 33 (1977).

Based on these findings, we agree that the State satisfied their burden of proving that Dobbs voluntarily, knowingly and intelligently waived her rights. The State showed that she was advised of her rights, that she understood them, and that she waived them. This is all that is required under the law to satisfy the State's burden in this regard. *See State v. Lee*, 175 Wis.2d 348, 360, 499 N.W.2d 250, 255 (Ct. App. 1993).

We also conclude that based on the trial court's findings, Dobbs voluntarily gave a statement and was not coerced by the police officers. The trial court, again based on credibility determinations, found that no improper police procedures were used in obtaining Dobbs's statement, and that she offered the statement of her own free will. These findings are not clearly erroneous and support the conclusion that Dobbs's statement was voluntarily given. Therefore, we reject her claim that the trial court erred in admitting her statement at trial.

*B. Sufficiency of the Evidence.*

Dobbs also claims that the evidence was insufficient to support her conviction. Dobbs argues that she was not a co-conspirator or co-defendant, Dan Johnson. Rather, she contends that she was coerced into assisting Johnson with the murder because she feared for her life.

[I]n reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If 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, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

*State v. Poellinger*, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990) (citations omitted). Based on this standard, we cannot accept Dobbs's contentions. Dobbs was charged as "party to a crime." Accordingly, in order to convict her of first-degree intentional homicide, the jury had to find only that she aided and abetted or conspired to commit the crime with her co-defendant. *State v. Hecht*, 116 Wis.2d 605, 619, 342 N.W.2d 721, 729 (1984).

The record documents a series of significant facts upon which a jury could reasonably convict Dobbs: she had a prior sexual relationship with co-defendant, Johnson; she, Johnson and another co-defendant planned how they would kill Thomas; she got the gun, which was the murder weapon, and handed it to Johnson; she admitted that she did not tell the police the truth initially because she was "involved" in the crime; and she wanted Thomas dead. Other witnesses confirmed the relationship between Dobbs and Johnson; another witness overheard the planning of the murder and testified that he heard Johnson talking about killing Thomas with Dobbs in the room; and another witness saw Dobbs hand the gun to Johnson.

Based on the foregoing facts, a reasonable jury could have found that Dobbs was a party to this crime and that she was not coerced as she claimed. Accordingly, we reject her claim that the evidence is insufficient to support the conviction.

*By the Court.* – Judgment affirmed.

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