



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

March 6, 2019

To:

Hon. Kristine E. Drettwan
Circuit Court Judge
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121

Kristina Secord
Clerk of Circuit Court
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

John Blimling
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jeffrey W. Jensen
111 E. Wisconsin Ave., Ste. 1925
Milwaukee, WI 53202-4825

Zeke Wiedenfeld
District Attorney
P.O. Box 1001
Elkhorn, WI 53121

You are hereby notified that the Court has entered the following opinion and order:

2018AP1329-CR

State of Wisconsin v. Patrick J. Salzman (L.C. #2016CF108)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Patrick J. Salzman appeals from a judgment of conviction after a jury found him guilty of attempted first-degree intentional homicide, armed robbery, operating a vehicle without consent, and attempted second-degree sexual assault with the use of force. Salzman argues that the evidence at trial was not sufficient as a matter of law to sustain the jury's verdict finding

Salzman guilty of attempted second-degree sexual assault by use of force and asks us to grant a judgment of acquittal on that charge. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm the judgment of conviction finding Salzman guilty of attempted second-degree sexual assault with use of force.

On March 26, 2016, Salzman was at a strip club. While in a VIP room with the victim, who was a dancer at the club, Salzman tried to pull down the victim's panties and told the victim that she was going to have sex with him "whether [she] wanted to or not." When the victim tried to leave the VIP room, Salzman lunged at her, grabbed her throat, and said he was her "ruler." The victim kicked Salzman in order to get away. The victim testified that she never gave Salzman permission to have sex with her or to touch her breasts or vaginal area.

Salzman thereafter left the VIP room, stole money from a tip jar, slashed a bouncer's throat with a knife, and went to the parking lot where he carjacked a vehicle. Salzman told the driver of the vehicle to take him to Beloit. He later produced a knife and told the driver he was going to die, and the driver bailed out of the vehicle. Salzman took the driver's vehicle and drove away. He crashed the vehicle a short time later, and he was apprehended.

Salzman was found guilty of all four charges after a three-day jury trial. Salzman challenges on appeal only the sufficiency of the evidence to support his conviction for attempted second-degree sexual assault with use of force. WIS. STAT. § 940.225(2)(a). When we review a "sufficiency" challenge, "[w]e give great deference to the determination of the trier of fact."

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

State v. Hayes, 2004 WI 80, ¶57, 273 Wis. 2d 1, 681 N.W.2d 203. We examine the record to find facts that support upholding the jury’s verdict. *Id.* To overturn the jury’s decision, we must find that the jury relied on evidence that was “inherently or patently incredible.” *State v. Tarantino*, 157 Wis. 2d 199, 218, 458 N.W.2d 582 (Ct. App. 1990).

The elements required for a finding of guilt on a charge of attempted second-degree sexual assault with use of force are, first, that the defendant intended to commit the crime of second-degree sexual assault, and, second, that the defendant did acts toward the commission of the crime of second-degree sexual assault, which demonstrate unequivocally that the defendant intended to and would have committed the crime except for the intervention of another person or some other extraneous factor. *See* WIS. STAT. § 939.32. Second-degree sexual assault occurs when someone has sexual contact with another person by use or threat of force without that person’s consent. WIS. STAT. § 940.225(2)(a).

The evidence clearly satisfied both elements. The victim testified that Salzman told her he was going to have sex with her “whether [she] wanted to or not,” he tried to pull down her panties, he got “touchy,” he grabbed her by the throat, and he told her he was her “ruler.” The victim testified that she did not consent to any sexual contact with Salzman. But for the victim’s act of escaping from Salzman, the jury had more than sufficient evidence to conclude that Salzman would have sexually assaulted her. We have no hesitation in concluding that the jury drew “the appropriate inferences from the evidence adduced at trial to find the requisite guilt,” and we uphold the jury’s finding of guilt. *See State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

Salzman argues that his attempt to remove the victim's panties was an "overture," and his statements left open the possibility that the victim might consent to sexual contact. While those are inferences a jury might accept, they clearly are not the only inferences, and we will uphold a jury's verdict when it relied upon appropriate inferences. The inferences the jury relied on are not "inherently or patently incredible," and, therefore, we uphold the jury's verdict.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals