

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 21, 2002

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. 02-1017
STATE OF WISCONSIN**

Cir. Ct. No. 02-FO-23

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF DANE,

PLAINTIFF-RESPONDENT,

V.

JOHN W. MOORE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

¶1 LUNDSTEN, J.¹ John W. Moore appeals a judgment of the circuit court convicting him of disorderly conduct contrary to Madison General

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Ordinance § 32.03. Moore argues that his conviction should be reversed or his case remanded for a new trial on the grounds that (1) the trial court improperly denied Moore's motions to exclude evidence; (2) the trial court improperly denied Moore's motion to continue his trial; and (3) there is insufficient evidence to uphold Moore's conviction. We disagree with all of Moore's arguments and affirm.

Background

¶2 According to the probable cause affidavit, on December 31, 2001, Moore was at Einstein Brothers Bagels shop at the same time as Officer Patrick Grady of the Madison Police Department and Officer Steve Sasso of the University of Wisconsin Police Department. Moore walked past Officer Sasso and accidentally brushed against Sasso's foot. Sasso said, "I'm sorry, John." Moore began swearing at Officer Sasso and stating that he was not on a first-name basis with Sasso. Moore was loud and used profane language inside the store, disturbing the store manager and store patrons. Moore was asked to leave and, when he refused, he was arrested for disorderly conduct.

¶3 Before trial, Moore sought to exclude evidence obtained by Officer Grady and the testimony of Officer Sasso. Moore also moved to continue his trial in order to allow the Madison Police Department time to prepare a cassette tape recording of Officer Grady's calls on December 31, 2001, to the Madison police dispatch. The trial court denied all of Moore's motions.

Discussion

¶4 Moore argues that his motions to exclude evidence obtained by Officer Grady and to exclude testimony from Officer Sasso should have been

granted because Officer Grady was on an illegal coffee break and because Officer Sasso was outside his jurisdiction at the time of the incident. In addition, Moore argues that his motion to continue his trial should have been granted because, if he had access to Officer Grady's police dispatch reports, Moore would have had evidence of Officer Grady's unlawful presence in Einstein Brothers Bagels shop. Also, Moore complains that the evidence is insufficient to sustain his conviction.

¶5 Decisions to admit or deny evidence and whether to grant discovery are discretionary with the trial court. *State v. Hamm*, 146 Wis. 2d 130, 142-43, 430 N.W.2d 584 (Ct. App. 1988); *Frankard v. Amoco Oil Co.*, 116 Wis. 2d 254, 267, 342 N.W.2d 247 (Ct. App. 1983). In reviewing a discretionary decision, the “court will look for reasons to sustain the trial court.” *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968).

¶6 Regardless whether Officer Grady was properly or improperly on a coffee break, or in or outside his jurisdiction, we fail to see how that affects the admissibility of Officer Grady's testimony regarding what he observed at Einstein Brothers. We conclude the trial court appropriately used its discretion in denying Moore's motion to exclude evidence obtained by Officer Grady. For this same reason, the trial court properly concluded that the dispatch reports for December 31, 2001, were “irrelevant” to Moore's case.

¶7 We need not decide whether Moore's motion to exclude testimony from Officer Sasso was improperly denied, because there is no evidence in the record that Officer Sasso ever provided any evidence in this case.

¶8 Finally, Moore contends the evidence was insufficient to show that an “injury or disorderly conduct was committed against” Einstein Brothers Bagels shop. The record does not contain a trial transcript. “It is the appellant's burden

to ensure that the record is sufficient to address the issues raised on appeal.” *Lee v. LIRC*, 202 Wis. 2d 558, 560 n.1, 550 N.W.2d 449 (Ct. App. 1996). Without a trial transcript, we are unable to address Moore’s sufficiency of the evidence claim. We affirm his conviction.

By the Court.—Judgment affirmed.

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

