

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 2007

David R. Schanker
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. 2006AP603-CR

Cir. Ct. No. 2004CF172

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ERIKA J. WOLFF N/K/A ERIKA J. PINTELON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
JACQUELINE R. ERWIN, Judge. *Affirmed.*

Before Higginbotham, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Erika Wolff appeals a judgment convicting her of one count of arson and four counts of recklessly endangering safety. Wolff argues that there was insufficient evidence for the jury to find her guilty, and that she should be allowed a new trial in the interest of justice. We affirm.

¶2 We will “not reverse a conviction 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 (1990). The jury resolves issues pertaining to the credibility of the witnesses and the weight of the evidence. *See id.* at 504. We will adopt all reasonable inferences that support the jury’s verdict. *See id.*

¶3 Where, as here, there are no witnesses to the commission of the crime, a finding of guilt may rest entirely on circumstantial evidence. *See id.* at 501-02. With regard to arson, in particular, the supreme court has said:

Arson is one of those crimes which are peculiarly of secret preparation and commission; and it is very seldom that the prosecution can furnish testimony of an eyewitness who observed the setting of the fire. The very nature of the crime is such that it becomes necessary for the State, in many, if not most, cases to rely upon circumstantial evidence to establish the guilt of the accused.

State v. Kitowski, 44 Wis. 2d 259, 262, 170 N.W.2d 703 (1969) (citation and quotations marks omitted). Whether the evidence is sufficient to sustain the jury’s verdict is a question of law that we review de novo. *State v. Booker*, 2006 WI 79, ¶12, 292 Wis. 2d 43, 717 N.W.2d 676.

¶4 We conclude that there is sufficient evidence to support the conviction. Wolff’s estranged husband was living alone in the apartment where the fire occurred, and he and Wolff were in the midst of an acrimonious divorce. Wolff had gone to the apartment building with her children to retrieve some belongings and was there during the period of time when the fire was set. Other than Wolff and her children, the downstairs neighbors saw no one else in the building. Wolff’s children were playing outside alone for ten minutes during the

time that Wolff and her children were at the building. An expert testified that the fire was intentionally set and that he had ruled out accidental causes for the fire. This circumstantial evidence, considered as a whole in the light most favorable to the conviction, shows that a fire was intentionally set, that Wolff had an opportunity to set it and she had a motive to do so. The evidence is sufficient to support the jury's conclusion that Wolff started the fire.

¶5 Wolff argues that there was no evidence that showed that she was in the apartment itself. She testified that the apartment door was locked and that she had gone only to the basement to retrieve clothing from a storage area. She also points to the testimony of the downstairs neighbor, Christopher Blum, who said that he heard Wolff talking in the basement and that he heard someone walking around upstairs in the apartment where the fire was set. Wolff asserts that this testimony shows that someone else must have been walking around upstairs while she was in the basement. We disagree. Blum did not testify that he heard sounds coming from the basement and the apartment above simultaneously—just that he heard sounds from both places on the afternoon in question.

¶6 Wolff also contends that she should be granted a new trial because the real controversy was not fully tried. *See* WIS. STAT. § 752.35 (2005-06).¹ This argument essentially recasts Wolff's claim that there was insufficient evidence to convict her based on Blum's testimony. As indicated above, we have rejected this argument. We conclude that the real matter in controversy was fully tried.

By the Court.—Judgment affirmed.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

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

