

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 18, 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. 2007AP1027-CR**

**Cir. Ct. No. 2005CF6300**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ROBERT E. JACKSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 FINE, J. Robert E. Jackson appeals a judgment entered after a jury found him guilty of unlawfully possessing a firearm because he was a felon, *see* WIS. STAT. § 941.29(2)(a), and of theft of a firearm, *see* WIS. STAT.

§ 943.20(1)(a) & (3)(d)5. He claims that the evidence was insufficient to support his convictions. We affirm.

I.

¶2 Jackson was charged with taking a gun from a restaurant where he worked. Whether there was sufficient evidence to support the jury's verdicts hinges on the testimony of one of the two witnesses who testified at Jackson's trial, David Taylor.

¶3 Taylor testified that he was the main cook at a restaurant that he co-owned with his mother. He told the jury that the restaurant had two main areas: the front customer lobby and a place in the back for employees that had, among other things, an office and a door to the outside. He testified that the only way to get out through the back door was to remove a wood "security board" that went across the inside of the door, and that the back door was not accessible from the outside because there were no doorknobs or locks on the outside. He also testified that the front lobby was separated from the back area by a bullet-proof turnstile door, and that a customer could not get into the back unless someone opened a locked door between the lobby and the back. Taylor said that he kept the gun that Jackson was accused of taking in the top drawer of a desk in the back office.

¶4 According to Taylor, Jackson came to work around 4:00 p.m. on the day the gun was stolen. Taylor testified that he saw the gun sometime between 5:00 and 6:00 p.m. while making out a grocery list at the desk. Taylor told the jury that he left the restaurant around 8:20 p.m. to have a "quick beer" at a neighboring bar. According to Taylor, Jackson was the only person in the restaurant when he left, and the board was on the back door. Taylor said that when he came back about five minutes later through the door between the lobby

and the back area, the door was locked. Taylor also told the jury that Jackson was gone and the board was off of the back door. Taylor said that he then went to get his gun, but it was gone. Jackson did not come to work the next day.

¶5 Taylor testified that, besides Jackson, the only people in the employee area that evening were his mother, his daughter, and his daughter's mother, but that none of them went into the back office that night. Taylor told the jury that, based on his "observations of the restaurant" and "the condition it was [in] when [he] left and returned," it was not possible that anyone other than Jackson had taken the gun.<sup>1</sup>

¶6 As we have seen, the jury found Jackson guilty. In upholding the verdict against Jackson's challenge, the trial court opined:

There was proof that there was a gun at the restaurant. Based on the design of the gun or, rather, the restaurant, the doors being locked leading into the office area and leading out from the office area all prevented anyone from entering under the circumstances of this particular case.

The fact that the security board, I think it was that I mentioned, was off the door in the back indicates that the defendant left through that back area, and no one could enter from the outside of the back door because it couldn't be opened from there, and the door was locked leading into the office when Mr. Taylor came back.

The defendant was the only person in the store when he left, and he was not there when Mr. Taylor came back. The defendant also did not return to work after that period of time.

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<sup>1</sup> Although Jackson does not challenge Taylor's opinion that Jackson was the only person who could have taken the gun, it was admissible under WIS. STAT. RULE 907.01 (opinions by lay witnesses), because it was "rationally based" on Taylor's perceptions that night and also was "helpful" to the jury's assessment of whether Jackson was guilty beyond a reasonable doubt.

For those reasons the Court will deny the motion ...  
for judgment notwithstanding the verdict.

II.

¶7 Jackson claims that the evidence was insufficient because there was no physical evidence to link him to the gun that was stolen from the restaurant. We disagree.

¶8 A finding of guilt may rest on circumstantial evidence. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752, 755 (1990). Indeed, “circumstantial evidence is oftentimes stronger and more satisfactory than direct evidence.” *Ibid.* The standard of review is the same whether the case is based on direct or circumstantial evidence:

[A]n appellate court may 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.

*Ibid.* Accordingly, we must look at the “evidence in a light most favorable to the jury’s verdict.” See *State v. Bannister*, 2007 WI 86, ¶22, \_\_\_ Wis. 2d \_\_\_, \_\_\_, 734 N.W.2d 892, 897.

¶9 There was ample circumstantial evidence to support Jackson’s convictions:

- Taylor saw the gun in the restaurant the night it was stolen.
- The gun was in a locked area of the restaurant to which only Taylor and Jackson had access.
- Jackson was the only person in the restaurant when Taylor left.

- When Taylor returned approximately five minutes later, Jackson and the gun were gone.
- Jackson did not report to work the next day.

A reasonable jury could conclude beyond a reasonable doubt that Jackson took the gun from Taylor's restaurant.

*By the Court.*—Judgment affirmed.

Publication in the official reports is not recommended.

