

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 25, 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

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No. 94-3109-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RAUL M. CASTRO,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
GILBERT N. GERAGHTY, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Sundby, J.

PER CURIAM. A jury found Raul M. Castro guilty of burglary, theft and arson, arising from the October 8, 1988 fire at the Parthenon Restaurant in downtown Madison. On appeal, Castro contends that there was insufficient evidence that he was the perpetrator of the crimes. He also argues that the trial court erroneously exercised its discretion when it permitted the State to introduce evidence that he had been discharged for stealing from the

business, and when it refused Castro's request to question Gus Paras, the owner of the Parthenon, about a 1979 fire of suspicious origin at another restaurant owned by Paras. Because the court's evidentiary rulings are reasonable discretionary determinations and because sufficient evidence supports the guilty verdicts, we affirm.

Sufficiency of the Evidence

The outcome of Castro's challenge to the sufficiency of the evidence is controlled by this court's standard of review--a standard misstated and misapplied in Castro's appellate brief. While Castro catalogues evidence that he believes would support not guilty verdicts, this court "need not concern itself in any way with evidence which might support other theories of the crime. An appellate court need only decide whether the theory of guilt accepted by the trier of fact is supported by sufficient evidence to sustain the verdict rendered." *State v. Poellinger*, 153 Wis.2d 493, 507-08, 451 N.W.2d 752, 758 (1990).

This court's standard of review remains constant, whether the evidence is direct or circumstantial. *Id.* at 503, 451 N.W.2d at 756. We may not substitute our judgment for that of the jury unless the evidence, viewed most favorably to the conviction, is so lacking in probative value and force that no reasonable jury could have found guilt beyond a reasonable doubt. *Id.* at 507, 451 N.W.2d at 757-58. When the evidence supports more than one inference, we must accept the inference drawn by the jury unless the evidence on which that inference is based is incredible as a matter of law. *Id.* at 506-07, 451 N.W.2d at 757.

Castro argues that the evidence was insufficient to prove that he was the person who committed the crimes. The record defeats that argument.

Castro was a former employee of the Parthenon. Paras fired Castro two months before the fire for stealing. Castro had worked the late shift. He knew the restaurant's closing procedures, and knew that Paras kept the day's cash proceeds in a locked basement office. Castro was in the restaurant about 2:00 a.m. on the day of the fire. Paras briefly spoke with him, but Paras

did not see him leave. The restaurant closed at 3:00 a.m., and Paras and the other employees left the premises about 4:30 a.m. The alarm system went off shortly before 8:00 a.m., and the fire was discovered by the security guard who responded to the alarm.

The fire was concentrated around the basement office. The lock on the office had been cut away with a circular saw. Paras testified that a substantial amount of money was taken from the office. A walk-in cooler was located across the hallway from the office. Police found two empty bottles and one partially empty bottle of "California wine cooler" on the floor of the walk-in cooler. Paras testified that the bottles did not belong there. Paras also testified that the restaurant had run out of that particular brand shortly before the fire, and that a delivery had been made on October 3, 1988. Castro's fingerprints were found on the bottles.¹

The evidence, while circumstantial, supports the inference that Castro committed the crimes. Paras saw Castro in the restaurant a few hours before the fire. Castro was familiar with the restaurant, and could have hid until Paras left. He would have known that money was kept overnight in the office. His fingerprints were found at the scene, on bottles that could not have been present while he was an employee. His discharge two months before the crimes suggested a motive. See *State v. Johnson*, 121 Wis.2d 237, 252-53, 358 N.W.2d 824, 831 (Ct. App. 1984) (evidence of a prior crime is admissible to suggest that revenge was a motive for the instant crime).

¹ Castro cites to *Borum v. United States*, 380 F.2d 595, 596 (D.C. Cir. 1967), for the proposition that when a conviction is based solely on fingerprint evidence, the State must prove, to the exclusion of every other reasonable hypothesis, that the fingerprints found at the scene could only have been put there when the crime was committed. Castro suggests that the application of that proposition to these facts compels a reversal. We disagree. *Borum* is not controlling precedent. See *State v. Webster*, 114 Wis.2d 418, 426 n.4, 338 N.W.2d 474, 478 (1983). Fingerprint evidence is treated like any other item of circumstantial evidence. We also note that the fingerprint evidence was not the only evidence linking Castro to the crimes.

Other Act Evidence

When reviewing a trial court's evidentiary rulings, the question before this court "is not whether this court, ruling initially on the admissibility of the evidence, would have permitted it to come in, but whether the trial court exercised its discretion in accordance with accepted legal standards and in accordance with the facts of record." *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983) (quoting *State v. Wollman*, 86 Wis.2d 459, 464, 273 N.W.2d 225, 228 (1979)). This court will affirm if there is a reasonable basis for the trial court's decision. *Id.*

Castro contends that the trial court erred when it permitted Paras to testify that Castro had been fired for stealing money from the cash register. Under § 904.04(2), STATS., evidence of other wrongs may be admitted if offered as proof of motive. In this case, the trial court ruled that the circumstances surrounding Castro's discharge, including the reason for his firing, were relevant to show Castro's motive to steal and to damage property owned by Paras. The court's ruling was a proper exercise of discretion.

The 1979 Fire

Castro also contends that the trial court erred when it excluded evidence of a 1979 fire at another restaurant owned by Paras. Castro sought to cross-examine Paras about that fire and "to discredit [Paras] by presenting facts showing bias."

When defining the scope of permissible cross-examination, the proper test "is not whether the answer sought will elucidate any of the main issues in the case but whether it will be useful to the trier of fact in appraising the credibility of the witness and evaluating the probative value of the direct testimony." *State v. Lindh*, 161 Wis.2d 324, 348, 468 N.W.2d 168, 176 (1991) (quoting *Rogers v. State*, 93 Wis.2d 682, 689, 287 N.W.2d 774, 777 (1980)). Cross-examination will not be allowed unless there is a reasonable relation between the evidence sought to be introduced and the proposition to be proved. *Id.*

The scope of proper cross-examination is a question committed to the broad discretion of the trial court. *Id.* This court will reverse a trial court's limitation or prohibition of cross-examination offered to show bias only if the ruling "represents a prejudicial abuse of discretion." *Id.* at 348-49, 468 N.W.2d at 176. This court will affirm if a reasonable basis exists for the trial court's ruling. *Id.* at 349, 468 N.W.2d at 176.

The trial court disallowed the evidence because the 1979 fire was too remote in time to these crimes, and because Castro had not shown that Paras was directly involved in the earlier fire. The trial court's determination was a reasonable exercise of discretion. Several years separated the fires. Castro offered no evidence that Paras was implicated in any fashion in the 1979 fire. "[E]vidence that simply affords a possible ground of suspicion" against a third person is not admissible. *State v. Denny*, 120 Wis.2d 614, 623, 357 N.W.2d 12, 17 (Ct. App. 1984). We conclude that the trial court's refusal to admit evidence of the 1979 fire was a reasonable discretionary decision.

By the Court. – Judgment affirmed.

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