

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 24, 2008

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. 2007AP2428-CR

Cir. Ct. No. 2005CF6291

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ALBERT B. COLLINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM W. BRASH, Judge. *Affirmed.*

Before Curley, P.J., Wedemeyer and Fine, JJ.

¶1 PER CURIAM. Albert B. Collins appeals from a judgment entered after the trial court found him guilty of one count of attempted abduction of a child

by force, contrary to WIS. STAT. §§ 948.30(2)(b) and 939.32 (2005-06).¹ Collins contends that the evidence was insufficient to support the conviction as the victim's testimony was discredited by the inconsistencies. Because the evidence was sufficient to support the judgment of conviction, we affirm.

BACKGROUND

¶2 In November 2005, Collins was charged with two counts of attempted abduction of a child by force. The first count stemmed from an incident on September 22, 2005, at approximately 7:50 a.m., when a fourteen-year-old girl was approached by a black male driving a blue Toyota Camry while she was waiting for a bus. The man got out of the car and attempted to grab her right arm and pull her toward him before she broke free and ran home.

¶3 The second count arose from a similar incident, which occurred on November 1, 2005, involving a different victim, R.G., also a fourteen-year-old girl. R.G. was waiting for a bus to take to school at approximately 7:30 a.m. near 45th and Villard Streets. A black man, driving a Toyota Camry stopped and exited his vehicle. He spoke to R.G., grabbed her right arm and told her to get in the car with him. R.G. kicked him in the groin and ran westbound. She went to the next bus stop, got on the bus and proceeded to school. When she arrived, she told the principal what had happened and provided the license plate of the Toyota Camry as 247-GWR. The police were called and traced the plate to Collins.

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

¶4 Collins was arrested and charged with both counts. He pled not guilty and the case was tried to the court. At the conclusion of the testimony, the trial court found Collins not guilty on the first count, but guilty on the second. In so ruling, the trial court indicated that although there were inconsistencies in the testimony, he found the victim's reporting of the license plate number to be credible. The trial court also found that the alibi witness's testimony was not so definite as to date or time, and therefore could not overcome the other evidence. Collins was convicted and sentenced. He filed a motion seeking to reconsider the trial court's verdict, which was denied. Judgment was entered. He now appeals.

DISCUSSION

¶5 Collins asserts that the evidence was so insufficient that no reasonable trier of fact could have found him guilty beyond a reasonable doubt. He criticizes the trial court for discounting the alibi witness's testimony and argues that a child witness's recollection of a license plate number should not be the sole evidence to sustain a conviction. We are not persuaded by Collins's contentions.

¶6 In reviewing sufficiency of the evidence claims:

an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990) (citation omitted). In applying this standard, we cannot reverse the trial court's

determination. There was no dispute here that an attempted abduction of a child, R.G., occurred. The only dispute was whether Collins was the perpetrator. There was no eyewitness identification of Collins. Rather, he was identified through the license plate number the victim provided.

¶7 Collins points out that the victim gave different descriptions of the color of the car telling one officer it was red and the other officer it was blue. R.G., however, testified that she never said it was red, suggesting that one of the officers may have recorded the wrong color. R.G. testified that she was certain the car was a blue Toyota Camry. She positively identified the car during her testimony from picture exhibits. Collins also argues that R.G. gave differing descriptions of the clothes the perpetrator was wearing and his facial hair. He suggests that these inconsistencies serve to support his theory that she got the license plate number wrong. He further supports his argument by the fact that R.G. could not positively identify him as the perpetrator immediately after the incident, nor at the time of trial. He argues that given these inconsistencies together with the testimony of his alibi witness, he should have been acquitted.

¶8 We are not convinced that the inconsistencies proffered by Collins render the verdict insufficient. The trier of fact is the sole arbiter of the credibility of witnesses and alone is charged with the duty of weighing the evidence. *Id.* at 506. The fact finder is charged with reconciling any inconsistencies in the testimony. *State v. Toy*, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985). Inconsistencies at trial are common and the trial court as the finder of fact was in the best position to resolve them. *See Thomas v. State*, 92 Wis. 2d 372, 383, 284 N.W.2d 917 (1979). Here, the trial court was aware of the inconsistencies in the victim's testimony. It weighed those together with the testimony of the alibi witness and determined that there was sufficient evidence to convict.

¶9 R.G., although inconsistent with respect to certain details, was certain that the blue Toyota Camry, with license plate number 247-GWR was the vehicle involved in this crime. She did not waiver on that fact. She was certain about the license plate and car. It is undisputed that this vehicle is registered to Collins and Collins admits that this is his vehicle. He argues he can not be convicted on the basis of a car because another person could be driving his vehicle. That is true, except for the fact that Collins testified no one else drove his vehicle the day of the incident. Collins contends R.G. should have been able to identify her perpetrator as she was in close proximity and it was broad daylight and a child is unlikely to be able to remember a license plate number accurately. This court cannot overturn a verdict based on a “should have” or speculation. The facts presented at trial were that the victim saw the license plate and was certain about the vehicle identification.

¶10 Moreover, Collins contends the trial court erred in not giving more weight to his alibi witness, Susan Sterling, who testified that she came to his home at about the same time and the same date that the attempted abduction had occurred. The trial court analyzed the alibi witness’s testimony and concluded:

[W]hile she was positive it was the day after her long day, [she] was not sure of the date of that event, also, indicated in her testimony that she was not sure of the time, believed it to be 7:30 but was not sure of that.

I then compared it to the testimony of the other witnesses, particularly [the victim and the officers] as well as all the other witnesses that testified with regards to that event, again made an assessment of credibility and believed that the State has met their burden of proof with regards to that matter.

In reviewing the record in this case, we cannot conclude that the trial court erred. Sterling was certain that she went to Collins’s home on a Tuesday morning, but as

noted by the trial court, there was not the same certainty as to which Tuesday morning or exactly what time she was there. Based on this discrepancy, and certainty of the license plate evidence, we cannot conclude that the trial court's credibility assessment was erroneous.

¶11 Accordingly, based on the foregoing review as applied to the pertinent standards for this issue, we cannot overturn the verdict on this basis. There was sufficient evidence to support the conviction on count two of the complaint. Based on our resolution of the dispositive issue in this case, we also reject Collins' additional arguments that the trial court erred in denying his motion to reconsider the verdict and that a new trial is warranted in the interest of justice. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

By the Court.—Judgment affirmed.

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

