COURT OF APPEALS
DECISION
DATED AND FILED

July 20, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP680-CR **Cir. Ct. No. 2006CF1105**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLENE S. CORTES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County: MARY KAY WAGNER, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. Charlene S. Cortes appeals from the judgment of conviction entered against her. She argues on appeal that the circuit court erroneously precluded the defense from calling a witness and that the evidence did not support her conviction on two of nineteen charges. We conclude that the court

did not err when it excluded the evidence and that the State presented sufficient evidence on all of the charges. We affirm.

¶2 Cortes was convicted after a jury trial of six counts of failing to protect a child, seven counts of soliciting a child for prostitution, and six counts of child enticement. She was charged with having involved her fourteen- and fifteen-year-old daughters in prostitution. The court sentenced her to forty years of initial confinement and sixty years of extended supervision.

¶3 Cortes' defense at trial was that the older daughter, Maria M., prostituted herself. She argues on appeal that the circuit court erred when it excluded the testimony of a girl who knew Maria at the time of the incident. Cortes argues that the girl, Maggie C., would have testified that during the relevant time period, Maria told Maggie that she was going to prostitute herself and asked Maggie to join her. The circuit court would not allow the evidence, finding that it was not relevant and it was prohibited under WIS. STAT. § 972.11 (2007-08).

¶4 "A trial court's decision to admit or exclude evidence is a discretionary determination that will not be upset on appeal if it has 'a reasonable basis' and was made 'in accordance with accepted legal standards and in accordance with the facts of record.'" ***State v. Jenkins,*** 168 Wis. 2d 175, 186, 483 N.W.2d 262 (Ct. App. 1992) (citations omitted). Cortes argues that the circuit court erred because it did not properly apply the ***Pulizzano***[1] standards when it excluded the evidence.

[1] ***State v. Pulizzano***, 155 Wis. 2d 633, 456 N.W.2d 325 (1990).

¶5 We conclude, however, that while the evidence may not have been precluded under ***Pulizzano***, the circuit court nonetheless properly exercised its discretion when it excluded the evidence. The evidence the witness would have given showed only that Maria was engaging in prostitution. It was not relevant to the question of whether Cortes had failed to protect Maria, solicited Maria for prostitution, or enticed Maria to engage in prostitution. Because the testimony would not have affected that determination, we conclude that the circuit court properly exercised its discretion when it excluded the testimony.

¶6 Cortes also argues that the evidence at trial was not sufficient to convict her on two counts related to her second daughter, Jessica C. One count charged Cortes with soliciting a child for prostitution and the second count charged Cortes with child enticement—prostitution. WIS. STAT. § 948.08 and 948.07(2) (2005-06).

¶7 "[A]n 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." ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). When considering a challenge to the sufficiency of the evidence, we affirm if we conclude

> that the jury, acting reasonably, could have found guilt beyond a reasonable doubt.... [T]he jury verdict will be overturned only if, viewing the evidence most favorably to the state and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt.

State v. Alles, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation and emphasis omitted). If more than one inference can be drawn, the inference which

supports the jury's verdict must be followed unless the evidence was incredible as a matter of law. ***Id.*** at 377. "[I]f any possibility exists that the jury *could* have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, we will not overturn the verdict even if we believe that a jury *should* not have found guilt based on the evidence before it." ***Id.***

¶8 The evidence showed that Jessica accompanied her mother and Maria to the apartment where Cortes and Maria had previously engaged in prostitution. The evidence also showed that one of the men with whom Maria had previously had intercourse told Maria that he wanted to "get with" Jessica, that Cortes told Jessica to go into the bedroom with one of the men in the apartment, and that later Cortes asked Jessica if she wanted to have sex with one of the men. The evidence also showed that Cortes caused Jessica to go into the apartment building with the intent of having Jessica engage in prostitution. We conclude that there was sufficient evidence from which the jury could reasonably determine that Cortes solicited and enticed Jessica, a child under the age of eighteen years, for prostitution. Consequently, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2009-10).