COURT OF APPEALS
DECISION
DATED AND FILED

August 16, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP1158-CR **Cir. Ct. No. 2009CF2016**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARCELLOUS C. WOODS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KEVIN E. MARTENS, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Marcellous C. Woods appeals a judgment convicting him of one count of second-degree sexual assault, with use of force, one count of threatening to injure another to compel him to do an act, and one count of threatening to injure another to extort money. Woods contends that there

is insufficient evidence to support the jury's verdict and that he is entitled to a new trial because the real controversy was not fully tried. *See* WIS. STAT. § 752.35 (2009-10).[1] We affirm.

¶2 Woods first argues that there was insufficient evidence to support the jury's verdict finding him guilty of the crimes. When reviewing the sufficiency of the evidence, we look at whether "'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. Zimmerman***, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (quoting ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990)). "'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, [we] may not overturn a verdict….'" ***Id.*** This is true even if we believe that the jury should not have found guilt based on the evidence before it. ***Id.***

¶3 The victim testified that he and Woods were cellmates at the Milwaukee Secure Detention Facility, where the victim was serving time as an alternative to revocation. The victim testified that Woods bullied him, forced him to purchase canteen items, which Woods would then keep, and that Woods would punch, choke and slap him when he did not do as Woods asked. The victim also testified that Woods forced him to sleep naked, would rub and touch him, including intimate areas of his body, and would force him to perform sexual acts, all without his permission. The victim said that he did not tell anyone about this

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

because he was embarrassed and scared. Woods testified that he did not assault or intimidate the victim. In resolving the conflicting testimony, the jury found the victim more credible, as was its prerogative. *See* ***State v. Norman***, 2003 WI 72, ¶68, 262 Wis. 2d 506, 664 N.W.2d 97 ("The jury is the ultimate arbiter of a witness's credibility."). The victim's testimony provided sufficient evidence to support the verdict.

¶4 Woods next argues that he is entitled to a new trial because the real controversy was not fully tried. We have discretionary authority to reverse in the interest of justice whenever the real controversy has not been fully tried. WIS. STAT. § 752.35. The real controversy is not fully tried "when the jury had before it evidence not properly admitted [that] … clouded a crucial issue." ***State v. Hicks***, 202 Wis. 2d 150, 160, 549 N.W.2d 435 (1996).

¶5 Woods challenges the testimony of the investigating detective, Justin Carloni, who was allowed to testify in general about his experiences conducting other sexual assault investigations, including situations where there was no physical evidence due to delayed reporting. Woods contends that Carloni should have been permitted to discuss only his interview with the victim and any other personal knowledge that he had regarding this particular case.

¶6 After reviewing Carloni's testimony, we conclude that there is no reason to exercise our discretionary power of reversal under WIS. STAT. § 752.35. Carloni's testimony about his experiences conducting sexual assault investigations in various types of cases was relevant because it helped the jury to assess Carloni's experience as a sexual assault investigator. The testimony did not cloud the issues in this case; Carloni specified when he was talking about his experiences as a sexual assault investigator in general and when he was talking about his

investigation of this particular assault. Therefore, we reject the argument that Carloni's testimony prevented the real controversy from being fully tried.

By the Court.—Judgment affirmed.

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