COURT OF APPEALS
DECISION
DATED AND FILED

July 6, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1275-CR **Cir. Ct. No. 2013CF2441**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RYAN R. GARRISON,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Ryan R. Garrison appeals a judgment convicting him of robbery, with use of force, as a party to a crime. The issue is whether the evidence at trial was sufficient to establish that Garrison threatened the imminent use of force during the robbery. We affirm.

¶2 Garrison contends that the trial testimony did not support the jury's conclusion that he acted "forcibly," which is one of the elements of the crime. A defendant acts "forcibly" if the defendant "threaten[s] the imminent use of force against [the victim] with the intent to compel [the victim] to submit to the taking and carrying away of the property." WIS JI—CRIMINAL 1479. "'Imminent' means 'near at hand' or 'on the point of happening.'" ***Id.***

¶3 We will uphold a jury's verdict "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). "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." ***Id.***

¶4 The testimony at trial established that Garrison and his brother entered a Popeye's Restaurant and proceeded immediately to a door designated for employees that led to the kitchen and the cash registers, pushing aside the store manager and an employee as they went. J.B., another store employee who was working at a cash register, testified that Garrison forcibly pulled one of the cash registers out of the wall after yanking it repeatedly and then turned to her because she was standing by the other cash register. J.B. testified that Garrison, who was the "aggressor," said to her: "Bitch, open the register." J.B. told the jury: "Immediately I threw my hands in the air. I didn't want to provoke" him.

¶5 To establish threat of force, the State does not need to show "express threats of bodily harm." ***State v. Johnson***, 231 Wis. 2d 58, 69, 604 N.W.2d 902 (Ct. App. 1999). Instead, the bar is set much lower; the State establishes threat of

force if it shows that "'the taking of the property is attended with … threatening by menace, word, or gesture as in common experience is likely to create an apprehension of danger and induce a person to part the property for his or her safety.'" ***Id.*** (brackets and citation omitted).

¶6 We agree with the State that Garrison's command, "[b]itch, open the register," was designed "to frighten J.B. into submission and compliance." Garrison did not make a request—he imperiously demanded that J.B. open the cash drawer, using language intended to show power and dominance. J.B. understood Garrison's language to be an implied threat, testifying that she promptly threw her arms in the air so as not to provoke him. The jury could reasonably have drawn the inference that Garrison's words and actions were intended to make J.B. fear for her safety so that she would do as he said. There was sufficient evidence to support the jury's verdict that Garrison acted forcibly during the robbery.

By the Court.—Judgment affirmed.

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