COURT OF APPEALS
DECISION
DATED AND FILED

February 11, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3690-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GEORGE E. TAYLOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. A*ffirmed.*

Before Eich, Vergeront and Deininger, JJ.

PER CURIAM. George Taylor was convicted of kidnapping, second-degree sexual assault, and substantial battery, based on one course of conduct. He appeals only the kidnapping conviction, claiming there was insufficient evidence to convict him of kidnapping. We disagree.

Section 940.31(1)(b), STATS., provides that whoever does the following commits the crime of kidnapping: "By force or threat of imminent force seizes or confines another without … her consent and with intent to cause … her to be … held to service against … her will." Taylor does not dispute on appeal that he committed sexual assault while the victim was unconscious and reviving from Taylor's strangulation. Rather, he argues, first, that the element of "service against will" requires that he intended for the victim to perform "overt acts," rather than being passive; and second, that the evidence was not sufficient to show that he intended to have the victim perform overt acts. We conclude that, regardless of the merits on the first part, the argument fails on the second.

On a challenge to the sufficiency of the evidence, we will affirm unless the evidence, viewed most favorably to the State, is so lacking in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *See* ***State v. Poellinger***, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990). There was sufficient evidence in the record from which the jury could conclude that Taylor confined the victim with intent to have her perform overt acts. This evidence included his attempts to engage in sexual activity before the strangulation, his actual sexual contact while she was unconscious, and his continued confinement of her in the van after she revived. *Cf.* ***State v. Wagner***, 191 Wis.2d 322, 328-29, 528 N.W.2d 85, 87-88 (Ct. App. 1995) (noting that evidence that a defendant intended to sexually assault a victim satisfied the "holding to service against her will" element of the kidnapping statute).

By the Court.—Judgment affirmed.

This opinion will not be published.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