COURT OF APPEALS
DECISION
DATED AND FILED

March 31, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1184-CR **Cir. Ct. No. 2012CF2458**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY MONTRELL PERKINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Kessler and Brennan, JJ., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Anthony Montrell Perkins appeals a judgment convicting him after a jury trial of felony murder, with armed robbery as the predicate offense. Perkins argues that there was insufficient evidence to support a finding that he committed armed robbery. We affirm.

¶2 Robert Cameron formed a plan in the early morning hours of April 29, 2012, to rob Russell Setum and take his red truck. Cameron obtained a gun from Kevin Pittman. Nick Smith drove Cameron and Pittman around looking for Setum's truck, which they located in front of a tattoo shop. The men waited for Setum to return to his truck and began to follow him, but were stopped by a red light. The men noticed that their friend, Anthony Perkins, happened to be driving directly behind Setum and had also passed through the light. Pittman called Perkins and asked him where the red truck in front of him had gone.

¶3 Perkins then began to help the men with their plan to rob Setum by following the truck with his passenger Thomas Williams, who was not involved in the plot, and relaying information to the men through repeated phone calls discussing where Setum was and other aspects of the plan to steal Setum's truck. While Setum was stopped at a gas station, with Perkins behind him, Smith dropped Cameron off in a nearby alley at the home of Setum's mother so that Cameron could ambush him. When Setum arrived, Cameron made him get out of the truck at gunpoint, lie down on the ground and remove his clothing. Setum's mother, who had come outside her home as Setum pulled up and was standing across the street, saw what was happening and begged Cameron to stay calm, take what he wanted and not hurt Setum. After Setum took off most of his clothing, Cameron shot him at close range in the head and fired shots toward Setum's mother, who had backed toward her door. Cameron then drove away with Setum's truck, followed by the cars of Smith and Perkins, both of which came on the scene immediately after the shooting.

¶4 When reviewing the sufficiency of the evidence, "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." ***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, 503-04, 451 N.W.2d 752 (1990). "'The test is not whether this court or any of the members thereof are convinced [of the defendant's guilt] beyond a reasonable doubt, but whether this court can conclude that the trier of facts could, acting reasonably, be so convinced by evidence it had a right to believe and accept as true.'" ***Id.*** (brackets in original; citation omitted). We will not overturn the verdict "[i]f 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." ***Id.*** (citation omitted).

¶5 Perkins contends that we should overturn the verdict because there was insufficient evidence presented at trial for a reasonable jury to find that he was guilty of armed robbery, as opposed to robbery. Perkins concedes that he could be found guilty of robbery, as a party to a crime, because he helped Cameron, Smith and Pittman by following Setum's truck and relaying the information to them to help them with the robbery. But he contends that there was insufficient evidence presented at trial to show that he knew Cameron had a gun.

¶6 Even when more than one inference may reasonably be drawn from the evidence, we will uphold the jury's verdict if there is a reasonable inference that supports the jury's verdict. *See* ***Poellinger***, 153 Wis. 2d at 507. Here, the evidence at trial supported two opposing, but reasonable, inferences; that Perkins knew about the whole plan, including the gun; that Perkins knew only about the robbery, but did not know about the gun. Because both inferences are reasonable based on the evidence, we must uphold the jury's verdict based on inference that supports its implicit finding that Perkins knew about the gun.

¶7 To summarize the evidence that supports that inference, first, Perkins admitted in his statement to police that he knew that Cameron was lying in wait alone in an alley to ambush Setum to rob him of his truck. From this, the jury could have reasonably inferred that Perkins knew that Cameron had a weapon because it would be difficult for a single person in an alleyway to rob someone who is driving a truck without a weapon. Second, Smith and Williams both testified that Perkins knew about the plan. Perkins' lawyer asked Smith: "You never told [Perkins] what the robbery plan was did you?" Smith answered: "He knew." And the prosecutor asked Perkins' passenger Williams, "Did it appear that Perkins knew what was going to happen that night?" Williams responded: "I believe so, I think yes." While Smith and Williams were not specifically asked whether Perkins knew he was helping with an *armed* robbery, rather than a robbery, the jury could have reasonably inferred from the broad answers Smith and Williams gave that Perkins knew the whole plan, including the fact that Cameron was left in the alleyway to ambush Setum with a weapon. Third, Williams was asked what Perkins said after they heard gunshots, came around the corner, saw Setum's body in the street, drove past it and started following the stolen truck. Williams testified that Perkins said that he better receive his share of the robbery proceeds. From this testimony, namely Perkins' lack of comment on the presence of a dead body and his focus on getting his share of the proceeds, the jury could have reasonably inferred that Perkins was not surprised there was a gun involved. Fourth, the jury heard testimony about repeated phone calls between Perkins and the men in Smith's car. Although there was no testimony that the phone calls included a discussion of the gun, the jury could have reasonably inferred that the repeated conversations about the robbery plan included details, like Cameron's possession of a gun. Because the jury could have drawn

reasonable inferences from the evidence that Perkins knew he was helping with an armed robbery, rather than a robbery, we uphold the jury's verdict.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).