

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 19, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-0084-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MAURICE L. GLADNEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: JAMES P. DALEY, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Deininger, JJ.

PER CURIAM. Maurice Gladney appeals a judgment convicting him of physical abuse of a child and an order denying him postconviction relief. He claims the evidence adduced at trial was insufficient to support the verdict against him due to conflicts in the testimony and prior inconsistent statements. We disagree and affirm.

Gladney was a guard at the Rock County Juvenile Detention Center where fourteen-year-old Jermaine C. was incarcerated. On August 24, 1996, Jermaine became unruly and verbally abusive when the staff informed him that he would not be permitted to go to the recreation area with the rest of the juveniles because he had difficulty getting along with others. When the first two juvenile detention officers on the scene were unable to calm Jermaine down, they called upon Gladney to deal with the situation. Gladney determined that Jermaine needed to be transferred to the holding area of the facility. What happened next was disputed, but resulted in fire department paramedics transporting Jermaine by ambulance to the emergency room of a local hospital.

The defense theory was that Jermaine had some sort of attack, possibly as a side effect of the medications he was taking. Gladney presented evidence that Jermaine had exhibited difficulty breathing when agitated on prior occasions. The State's version of events was considerably different.

Jermaine testified at trial that Gladney punched him three or four times in the stomach as the officers escorted him from his cell while holding both his arms. Jermaine said the officers forced him to the floor, and Gladney then choked him around the neck until he began to shake uncontrollably. He said he spoke to Supervisor Nichole Kumien later that evening, but was afraid to tell her what happened for fear something worse would happen. Jermaine also admitted that he did not say anything about being punched or choked to the paramedics, doctors, or sheriff's deputies that he saw that evening, but explained that Gladney accompanied him to and from the hospital.

Officer Eric Harrell testified that Gladney told Jermaine that they would "kick [his] ass" if he did not calm down. He said Gladney punched

Jermaine in the ribs at least twice as he came out of his cell. Harrell said he went back into the cell to retrieve his radio and when he came out he saw Gladney with his hands around Jermaine's neck and Officer Solamon Battle with his knee on Jermaine's back. Jermaine was making a gargling noise and shaking violently, and there was fluid draining from his mouth. Harrell admitted that he had told Supervisor Nichole Kumlien, immediately after the incident, that Jermaine had had an asthma attack. He said that he initially lied at Gladney's request and signed a false statement because Gladney was his friend and he did not want to accuse him of misconduct, but that he decided to tell the truth and offer his resignation after several sleepless nights.

Officer Paula Holte testified she was watching on monitors from the central control station when the three other officers attempted to transport Jermaine to the holding cell. She said she heard Gladney tell Jermaine that he would "kick [his] fat ass" after Jermaine had thrown water out of his cell at him. She said that Jermaine was struggling as they pulled him from the cell, and she observed Gladney hit Jermaine three or four times in the stomach. She subsequently saw Gladney straddling Jermaine while Jermaine was coughing and rasping. Shortly thereafter the officers urged her to call 911. She admitted that she did not immediately tell the medical personnel or her supervisor that she had seen Gladney abuse Jermaine, and that she had also initially accused Battle of abusing Jermaine. She said she felt uncomfortable challenging Gladney's story in front of him because she had only been working at the detention center for four months.

Other witnesses corroborated the fact that the detention officers present during the incident had initially claimed Jermaine had suffered some sort of medical problem, and only later accused Gladney of improper conduct. Two

officers testified they had heard Gladney telling others that they needed to get their story straight.

The jury returned a guilty verdict. We will not overturn a jury verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *See State v. Gomez*, 179 Wis.2d 400, 404, 507 N.W.2d 378, 380 (Ct. App. 1993).

Gladney contends that the evidence at trial was insufficient to support the verdict because the testimony of the witnesses against him was inherently incredible as a matter of law. Testimony is not inherently incredible unless it is in conflict with the uniform course of nature or with fully established or conceded facts. *See Chapman v. State*, 69 Wis.2d 581, 583, 230 N.W.2d 824, 825 (1975). Mere conflicts in the testimony do not render the testimony inherently incredible. Rather, such conflicts are to be resolved by the jury.

Here, Jermaine and several detention officers testified that Gladney had punched and choked Jermaine. The officers acknowledged that they had initially lied about the incident. An attempted cover-up is not contrary to the uniform course of nature. Nor is it contrary to established or conceded facts. The jury apparently believed the officers' testimony that they had initially lied about the incident but were now telling the truth. In short, there was sufficient evidence to support the jury's verdict beyond a reasonable doubt.

By the Court.—Judgment and order affirmed.

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

