COURT OF APPEALS
DECISION
DATED AND FILED

June 1, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP0278-CR **Cir. Ct. No. 2000CM3243**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KATHY Y. WASHINGTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

¶1 FINE, J. Kathy Y. Washington appeals from a judgment entered on a jury verdict convicting her of disorderly conduct. *See* WIS. STAT. § 947.01. She contends that there was insufficient evidence to support the jury's verdict finding her guilty. We affirm.

I.

¶2 This case stems from an apparent shoplifting incident at a large Milwaukee department store in March of 2000. The main witness for the prosecution was Troy Stofflet, then employed by the store to prevent employee and customer theft. He told the jury that he and another store employee on the shoplifting detail, Lorna Markowski, saw a woman who had come into the store with Washington remove sensor tags from items of clothing. When they attempted to detain the woman outside of the store, as they are permitted to do, *see* WIS. STAT. § 943.50(3), Stofflet told the jury that Washington violently intervened:

> At that time, Ms. Washington came around, grabbed ahold of Lorna's coat and grabbed her to make her resist [*sic* (desist?)] from coming toward [the suspected shoplifter].
>
> As she pulled her coat, I recall Ms. Lorna Markowski's glasses falling.
>
> She grabbed ahold of one of her arms. I don't recall which arm it was, and later [the suspected shoplifter] was allowed able access inside [*sic*] the driver's door [of her car], because we were both being restrained from approaching [the suspected shoplifter].
>
> ….
>
> I observed Ms. Washington applying her hands onto Ms. Markowski, grabbing ahold of her jacket, preventing her from reaching [the suspected shoplifter], as well.
>
> She also, at that time when she pulled on the jacket, Lorna's head turned, her glasses fell.
>
> She also made contact with her arm, ripping her arm to prevent her from coming.
>
> Lorna was trying to pull away, but Ms. Washington had a pretty tight grip on her.

> There were some loud words exchanged between both parties, between Ms. Markowski and Ms. Washington.

¶3 Washington testified and told the jury that she never touched either Markowski or Stofflet, and did not interfere with their attempt to detain the suspected shoplifter. The jury believed Stofflet.

II.

¶4 A person is guilty of disorderly conduct if he or she "engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance." WIS. STAT. § 947.01. The State must prove two elements beyond a reasonable doubt before a jury may return a guilty verdict:

> "First, it must prove that the defendant engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud, or similar disorderly conduct." "Second, it must prove that the defendant's conduct occurred under circumstances where such conduct tends to cause or provoke a disturbance." An objective analysis of the conduct and circumstances of each particular case must be undertaken because what may constitute disorderly conduct under some circumstances may not under others.

State v. Schwebke, 2002 WI 55, ¶24, 253 Wis. 2d 1, 17, 644 N.W.2d 666, 674 (quoted source and internal citations omitted). Forcefully preventing a store employee from lawfully detaining a shoplifting suspect, especially when that forceful interference takes place in a public place outside the store's entrance, is, objectively, disorderly conduct.

¶5 As we have seen, Washington denied doing what Stofflet contends she did. But the jury chose to believe Stofflet. This ends the matter:

> [A]n 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. 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 even if it believes that the trier of fact should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis. 2d 493, 507, 451 N.W.2d 752, 757–758 (1990) (citation omitted).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.