



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

May 5, 2026

To:

Hon. Kendall M. Kelley
Circuit Court Judge
Electronic Notice

Hector Salim Al-Homsi
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Angela Dawn Chodak
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP527-CR State of Wisconsin v. Xavier Octavius Brown
(L. C. No. 2018CF1411)

Before Stark, P.J., Hruz, and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Xavier Brown appeals from a judgment convicting him, following a jury trial, of armed robbery as a party to a crime and misdemeanor battery. Brown challenges the sufficiency of the evidence to support the verdicts. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24). We affirm.

Brown contends that the evidence establishing his identity as one of the perpetrators of the offenses was circumstantial and not strong enough “to exclude every reasonable hypothesis consistent with [Brown’s] innocence.” As a threshold matter, we note that this contention

misstates the applicable standard of review. As the Wisconsin Supreme Court explained in *State v. Poellinger*, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990), the rule directing a jury to “reconcile the evidence upon any reasonable hypothesis consistent with the defendant’s innocence” refers only to the evidence the jury believes and relies upon to support the verdict, not to every piece of evidence offered at trial. WIS. J.I.—CRIMINAL 140 (2025). As the trier of fact, the jury may “within the bounds of reason” reject inferences consistent with a defendant’s innocence based upon its credibility determinations, its resolution of conflicts in the testimony, its weighing of the evidence, and its view as to what inferences can reasonably be drawn therefrom. *Id.* at 506-07 (formatting altered).

The *Poellinger* standard of review is the same in either a direct or circumstantial evidence case. *Id.* at 501. In reviewing the sufficiency of the evidence to support a jury’s verdict, an appellate court may not substitute its own judgment for that of the jury “unless the evidence, viewed most favorably to the [S]tate 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.” *Id.* at 507. Under this standard, we are required to search the record for “facts that support upholding the jury’s decision to convict.” *State v. Hayes*, 2004 WI 80, ¶57, 273 Wis. 2d 1, 681 N.W.2d 203.

Brown continually directs this court’s attention to evidence (or the lack of evidence) and inferences that would support his innocence rather than squarely addressing other evidence and inferences that would support the jury’s verdicts. We conclude that the following evidence produced at trial was not so lacking in probative value that the jury could not reasonably determine that Brown participated in the armed robbery and committed a battery during it.

A gas station clerk testified that two men entered the station's convenience store, located in Green Bay, in the early morning hours on September 23, 2018. One of the men, later identified as Christopher Gransberry, pulled out a handgun, pointed it at the clerk, and demanded to be given "all [the] money." After the clerk opened the cash register, the second man went behind the checkout counter and took the cash-filled till drawer from the register and several packs of Newport cigarettes. As the two men were leaving the store, the man who had gone behind the counter punched the clerk in the face and called him a "bitch." The clerk was unable to identify the man who punched him because his attention had been focused on the man who was pointing the gun at him.

The robbery and battery were captured on the gas station's surveillance video. Still shots from the video showed Gransberry holding a handgun with a silver slide and black handle and wearing an Oklahoma City Thunder baseball hat. The man who punched the clerk was wearing a dark hooded sweatshirt with a white lining and tan pants with embroidered horseshoes on the back pockets, and his face was visible at several points.

Surveillance video from a motel around the corner from the gas station showed a red Chevrolet Avalanche pickup truck park in the motel's parking lot about a minute after police were dispatched to the gas station. One of the two men who exited the vehicle wore an Oklahoma City Thunder baseball hat and was carrying an object wrapped in a towel about the size and shape of the stolen till drawer.

The day following the robbery, Gransberry and Brown were occupants of a red Chevrolet Avalanche that was involved in a traffic accident in Milwaukee. Law enforcement recovered a .380 caliber Jimenez pistol with a silver slide and black handle from the vehicle and a magazine

for the firearm from Brown's rear pocket. They also recovered two packs of Newport cigarettes from the vehicle. Gransberry was wearing an Oklahoma City Thunder baseball hat. Brown was wearing a dark gray hooded sweatshirt with a white lining and tan pants with a horseshoe pattern embroidered on the back pockets.

Brown argues that the gas station surveillance video and stills were of insufficient quality to be able to positively identify his face. However, that determination was solely within the province of the jury and provides direct evidence of Brown's guilt. Additionally, the jury could properly consider as corroboration the strong circumstantial evidence that Brown was with Gransberry (who Brown concedes was the gunman in the robbery) the following day, in the same vehicle seen around the corner from the location of the robbery, still wearing the same clothes from the robbery, and with similar items as those robbed.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction is summarily affirmed. WIS. STAT. RULE 809.21 (2023-24).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals