

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 9, 1998

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. 97-3150-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL K. BROOKS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Rock County: EDWIN C. DAHLBERG, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Michael Brooks appeals from a summary judgment convicting him of armed robbery and contributing to the delinquency of a minor, and from an order denying his motion for postconviction relief. Brooks does not contest the jury's finding that he and his accomplice robbed two women. The sole issue is whether the State sufficiently proved that Brooks used or threatened to use

a dangerous weapon while committing the crime. We conclude that the evidence was sufficient, and affirm.

At Brooks' jury trial his accomplice, Denzen Jones, testified that Brooks held a knife to Sheri Townsend's throat during the robbery. However, Townsend testified that the knife fell from Brooks' hand as he approached her. The other victim confirmed Townsend's version, stating that she saw a glimmer and then saw the knife fall from Brooks' right side. In a statement to police, Brooks admitted holding the knife as he approached the women, and then dropping it.

As Brooks points out, to prove armed robbery the State must introduce credible evidence that the defendant actually used or threatened to use a dangerous weapon, as opposed to merely possessing it during the robbery. Section 943.32(2), STATS.; *State v. Moriarty*, 107 Wis.2d 622, 630-31, 321 N.W.2d 324, 329 (Ct. App. 1982). Here, Brooks asks that we deem Jones' testimony incredible, and contends that the victims' testimony and Brooks' statement were not evidence that he used the knife or threatened to use it during the robbery.

We reject Brooks' contention. "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, 758 (1990). Here, even without Jones' unlikely version, the jury could reasonably infer that holding the knife as Brooks approached the victims was a "use" of it during the robbery. The jury could hardly infer any other use for the knife in those circumstances.

In so holding, we agree with the State's contention that it was not necessary for either victim to actually see Brooks holding the knife to prove a use or threat. The crime is proved by the acts done, not the victim's perception of those acts.

By the Court.—Judgment and order affirmed.

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

