COURT OF APPEALS
DECISION
DATED AND FILED

April 14, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3791

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CASSANDRA CRAWFORD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for St. Croix County: SCOTT R. NEEDHAM, Judge. *Affirmed.*

CANE, P.J. Cassandra Crawford appeals a conviction for attempted theft as a repeater in violation of §§ 943.20(1)(a), 939.32(1) and 939.62, STATS., and an order denying a new trial. She contends the complaint is defective, the evidence is insufficient to support the conviction and that she did not receive a fair trial. This court rejects her contentions and affirms the conviction.

Crawford first contends that the complaint is insufficient because it charges her with attempted theft, but the State in effect claimed attempted theft by fraud. The trial court correctly denied Crawford's various motions challenging the criminal complaint. A complaint is sufficient if it recites facts that would lead a reasonable person to conclude that a crime has probably been committed and the defendant probably committed the crime. ***State v. Blalock***, 150 Wis.2d 688, 694, 442 N.W.2d 514, 516 (Ct. App. 1989). Also, as stated in ***State v. Waste Management of Wisconsin, Inc***., 81 Wis.2d 555, 566, 261 N.W.2d 147, 151 (1978), the purpose of the charging document is to inform the accused of the acts he allegedly committed and to enable him to understand the offense so he can prepare his defense.

Essentially, the complaint alleges that Crawford was observed at the Shopko store in River Falls removing a Model 5630 AT&T telephone from a shelf, tearing the security code tag from the phone's box, throwing the security tag in back of the shelf behind the other boxed phones and then presenting this phone at the customer service counter in an attempt to "exchange" it for the same model phone of a different color. The phone retailed for $169.99. Crawford's acts were recorded on a security camera. This information sufficiently described the necessary facts for attempted theft.

Next, Crawford contends that she was denied a fair trial because the State charged her with attempted theft, but argued at trial that she was guilty of attempted theft by fraud. Thus, she argues that she was unable to present a defense due to an inadequate notice of the nature of the charge. This court is not persuaded. The State's allegation was consistent from the filing of the criminal complaint through the jury trial. It is undisputed that the State relied on Crawford's misrepresentation as part of her scheme to obtain a telephone from

Shopko without paying for it. The record demonstrates that Crawford was aware of the nature of the charge and the State's theory from the time the complaint was initially filed until the jury trial sixteen months later. The State correctly reasons that it does not follow, however, as Crawford suggests, that because the complaint *could* have been issued as attempted theft by fraud, it *must* have been issued as such, thereby requiring her to defend on a different charge. The facts were simple and straightforward. She attempted to steal a telephone from Shopko by removing a telephone from its shelf, tearing the security code tag from the box, throwing the tag behind the other boxes of phones, and then attempting to exchange the phone for the same model phone of a different color. There is absolutely no reasonable basis to conclude that Crawford was unaware of the charge or hindered in any way from defending on this charge.

Last, Crawford contends the evidence is insufficient to support the conviction. When the sufficiency of evidence is challenged on appeal, this court must sustain the conviction if, considering the evidence in the light most favorable to the prosecution, "a rational trier of fact could find … that the [S]tate proved the essential elements of the crime beyond a reasonable doubt." ***State v. Stewart***, 143 Wis.2d 28, 31, 420 N.W.2d 44, 45 (1988).

Stated another way:

> [I]n reviewing the sufficiency of the evidence to support a conviction, 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. 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, 757-58 (1990) (citation omitted).

Here, the evidence overwhelmingly supports the jury verdict. The evidence undisputedly shows that Crawford attempted to "exchange" a telephone for one that she had just previously removed from the store's shelf after removing its security tag code and throwing the tag behind other phone boxes.

Therefore, Crawford's arguments are rejected and the conviction is affirmed.

By the Court.—Judgment and order affirmed.

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