COURT OF APPEALS
DECISION
DATED AND FILED

February 15, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-1524-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

THOMAS E. BURROWS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Lincoln County: J. M. NOLAN, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Thomas Burrows appeals his conviction for felony child enticement of a seventeen-year-old girl, after a jury trial. The jury acquitted him of sexual intercourse with a child for the same incident. Burrows argues that when the trial court read the information it confused the jury and thereby invalidated the verdicts. The information charged that Burrows took the girl into a

bedroom, "causing the child to engage in an act of prostitution therein." Burrows believes that this excerpt had the effect in the jury's eyes of having sexual intercourse play a broader role in the case, making sexual intercourse not only an element of the crime of sexual intercourse with a child but also an element of child enticement. This in turn, he claims, made the jury's verdicts inconsistent and repugnant: the jury first acquitted Burrows of the sexual intercourse and then conversely found in the child enticement conviction that he did engage in sexual intercourse. We reject Burrow's arguments and affirm his conviction.

¶2 We agree with Burrows that the above-cited excerpt, if heard alone, could potentially confuse a jury. That excerpt, however, was not the trial court's only instruction. The jury had both oral and written instructions on the crime of child enticement. Those instructions made clear that the State was required to prove intent to engage in sexual intercourse, not sexual intercourse itself. This put the prosecution's case in proper perspective and safeguarded Burrows' right to fair instructions. *See* ***D.L. v. Huebner***, 110 Wis. 2d 581, 624, 329 N.W.2d 890 (1983). The complete instructions clarified any confusion that may have arisen from the wording in the information. Read as a whole, the instructions gave a proper description of the crime of child enticement. *See* ***State v. Hanson***, 182 Wis. 2d 481, 487, 513 N.W.2d 700 (Ct. App. 1994) (intercourse not required).[1]

[1] WIS. STAT. § 948.07(2) provides the following:

> Child Enticement. Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class BC felony:
>
> . . .
>
> (1) Causing the child to engage in prostitution.

¶3 The instructions also explain the verdicts. The jury found that Burrows enticed the girl into the bedroom, with intent to engage in sexual intercourse, but that no sexual intercourse took place. We see no error.[2]

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

[2] On remittitur, the trial court clerk shall issue an amended judgment to show a child enticement conviction under WIS. STAT. § 948.07(2) rather than under WIS. STAT. § 948.07(1). Burrows and the State agree that this amendment will conform the judgment to the information.