COURT OF APPEALS
DECISION
DATED AND FILED

December 9, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-1576-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LEE RAVEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: STUART A. SCHWARTZ, Judge. *Affirmed.*

¶1 ROGGENSACK, J.[1] Lee Raven appeals from a judgment convicting her of disorderly conduct while armed, contrary to §§ 947.01 and 939.63, STATS. She contends that the facts in the criminal complaint were inadequate to establish probable cause to believe that a crime had been committed.

[1] This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

She also challenges the sufficiency of the evidence to prove that her conduct constituted "otherwise disorderly conduct" as required by statute. We conclude that the criminal complaint stated facts sufficient to show probable cause. We also conclude there was sufficient evidence for the jury to find Raven guilty of disorderly conduct while armed. Accordingly, we affirm.

BACKGROUND

¶2 On the evening of the incident, Raven made three phone calls to the Verona Police Department within the span of half an hour. For one of those calls, Raven dialed 911 and hung up before the dispatcher was able to ascertain who phoned or what caused her to call. Raven testified that she knew the police would respond even though she hung up on the dispatcher.

¶3 The police responded to Raven's call in an emergency manner. Officer McChesney operated the emergency lights and siren on his squad car and proceeded to the residence. Officer Pelton also responded to the call. Neither were told anything about the emergency except that someone had placed a 911 call from Raven's address. Pelton knocked on the apartment building's exterior door; Raven answered the door. She stated that she wanted to cancel the 911 call because Pelton had responded to the call.

¶4 Pelton told Raven that she and McChesney had to determine what caused her 911 call, before they could leave. Raven then tried to retreat into her own apartment and close the door. Pelton saw a dark object in Raven's hand. While asking her what was in her hand, Pelton placed her foot in the apartment door to prevent Raven from closing it. Raven responded, "[o]h, you mean my gun" and proceeded to lift the gun in order to show it to the officers. At all times, the barrel of the gun was facing downward.

¶5 Pelton immediately told Raven to drop the gun. At that point, McChesney drew his weapon, pointed it at Raven and repeated Pelton's order to drop the gun. McChesney had to order Raven to drop the weapon three times before she complied. Pelton later examined the gun and found five rounds of live ammunition. Throughout the confrontation, Raven refused to talk to Pelton. When Raven eventually talked to McChesney, she stated that her initial 911 call was to complain about a person slamming the toilet seat in a nearby apartment, an apartment which was supposed to be vacant. She also stated that if the police did not solve that noise problem, she was "going to kill someone."

¶6 At trial, as a defense, Raven presented the testimony of Verona Police Chief, Edward Moffett. He said Raven often complained to him about certain officers who responded to her calls.[2] Moffett said he had sent a letter to Raven which stated "[i]f for whatever reason you feel you do not wish to work with the officer assigned, that is your choice and you can withdraw your request for service." Raven was convicted of disorderly conduct while armed with a dangerous weapon contrary to §§ 947.01 and 939.63, STATS. She appeals.

DISCUSSION

Standard of Review.

¶7 The sufficiency of a complaint is a question of law which we review *de novo*. *See* ***State v. Adams***, 152 Wis.2d 68, 74, 447 N.W.2d 90, 92 (Ct. App. 1989). The sufficiency of the evidence is also a question of law. *See* ***State v. Pankow***, 144 Wis.2d 23, 30, 422 N.W.2d 913, 914 (Ct. App. 1988). However, in

[2] Raven was a frequent caller of the Verona Police Department. One officer estimated that she had called the department between 600 and 700 times during a five-year period.

examining the evidence that was before the jury, we do not substitute our judgment for that of the jury merely because evidence is in conflict or because there is evidence which might have supported a different result. *See* ***id.*** Rather, we review whether the evidence is so insufficient in probative value and force that as a matter of law, no jury could have found guilt beyond a reasonable doubt. *See* ***id.*** (citing ***State v. Wyss***, 124 Wis.2d 681, 693, 370 N.W.2d 745, 751 (1985)). Additionally, we view the evidence, and all reasonable inferences therefrom, in the light most favorable to sustaining the jury's verdict. *See* ***Pankow***, 144 Wis.2d at 30, 422 N.W.2d at 914 (citing ***Jackson v. Virginia***, 443 U.S. 307, 319 (1979)).

Sufficiency of the Complaint.

¶8 A criminal complaint "is a written statement of the essential facts constituting the offense charged." Section 968.01(2), STATS. To be viable, a complaint must establish probable cause to believe that the crime charged was committed by the defendant. *See* § 968.03(1), STATS. A complaint establishes probable cause if it sets forth facts sufficient to permit a judicial officer "'to make the judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process.'" ***State ex rel. Cullen v. Ceci***, 45 Wis.2d 432, 442, 173 N.W.2d 175, 179 (1970) (citation omitted). The complaint need not, however, "contain all the allegations of fact which if proved would be necessary to convict." ***Id.***

¶9 A criminal complaint should not be strictly construed; rather, a complaint is sufficient if the facts alleged "give rise to reasonable inferences which are sufficient to establish probable cause … not in a hypertechnical but in a common sense evaluation …." ***State ex rel. Evanow v. Seraphim***, 40 Wis.2d 223, 226, 161 N.W.2d 369, 370 (1968) (footnote omitted). Therefore, although a

complaint must set forth "the 'essential facts' constituting the offense charged," it need not contain an "encyclopedic listing of all evidentiary facts upon which the state intends to rely …." ***Evanow***, 40 Wis.2d at 229, 161 N.W.2d at 372; § 968.01(2), STATS.

¶10 The complaint against Raven alleges the police dispatcher received a 911 call from a person who refused to identify herself. She would not specify what the problem was or respond to the dispatcher's questions. The call was traced to an apartment occupied by Raven, and officers were sent to the apartment to ascertain the problem. The complaint states that upon seeing Pelton, Raven told Pelton that she did not want to talk to her and stated that she was withdrawing her complaint. The complaint relates that as Raven was retreating into her apartment, Pelton saw a dark object in Raven's hand. She asked Raven what it was and Raven responded that it was her gun, by raising the gun with the barrel pointing downward. Pelton immediately ordered Raven to drop the gun. Raven was ordered to drop the gun four times before she finally complied. Raven also told officers that if the noise in a nearby apartment did not cease, she was "going to kill someone."

¶11 Raven cites ***State v. Wernstein***, 60 Wis.2d 668, 211 N.W.2d 437 (1973), and argues that it is not disorderly conduct to disobey a police officer. She contends that the complaint lacked probable cause because it alleges only that she disobeyed a police officer and that conduct is not unlawful. However, in ***Wernstein***, the court reasoned that under certain circumstances, refusal to obey a police command may constitute disorderly conduct. *See* ***id.*** at 674-75, 211 N.W.2d at 440.

¶12 ***Wernstein*** is distinguishable. There, four defendants were arrested for refusing to the leave the induction area of an Armed Forces office. The parties stipulated that the defendants were simply present and undertook no action except to refuse to leave when asked by a police officer to do so. In holding that the defendants' actions did not constitute disorderly conduct, the court stated "[i]f, however, there had been some additional basis other than the defendants' mere presence upon which the commanding officer based his fear for the [office's] personnel, we would not be moved to such a holding." ***Id.*** at 674, 211 N.W.2d at 440. The court also noted that there was absolutely no basis for the commanding officer's claim that his personnel feared for their safety. *See* ***id.*** at 676, 211 N.W.2d at 441. In this case, the complaint against Raven stated that by refusing to drop her weapon, she caused both officers to fear for their safety and caused one officer to draw his weapon.

¶13 Therefore, because the complaint alleges that Raven called the police; refused to answer the dispatcher's questions; caused officers to be dispatched; refused to cooperate with the investigating officers; brandished a loaded weapon, causing an officer to draw his pistol; and refused to drop her weapon, after being ordered to several times, the complaint gives rise to reasonable inferences which are sufficient to establish probable cause to believe that Raven committed disorderly conduct.

Sufficiency of Evidence.

¶14 Section 947.01, STATS., provides "[w]hoever, in a public or private place, 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 is guilty of a Class B misdemeanor." It

establishes two elements which underpin the offense of disorderly conduct: (1) wrongful conduct specifically set forth in § 947.01 or "otherwise disorderly conduct"; and (2) conduct undertaken in circumstances which tend to cause or provoke a disturbance. Raven challenges the sufficiency of the evidence only with respect to the first element: whether her actions constitute "otherwise disorderly conduct" under the statute.[3]

¶15 In ***City of Oak Creek v. King***, 148 Wis.2d 532, 436 N.W.2d 285 (1989), the supreme court considered what constitutes "otherwise disorderly conduct" under § 947.01, STATS. In that case, a news reporter followed an emergency vehicle and proceeded through a road block to an airplane crash site. *See* ***King***, 148 Wis.2d at 536, 436 N.W.2d at 286. A detective located the vehicle, told the reporter that he was in a restricted area and would have to leave. *See* ***id.*** at 537, 436 N.W.2d at 286. While being escorted out of the area, the reporter broke from the detective, jumped a fence, sprinted to the top of a hill and began taking pictures. *See* ***id.*** at 537-38, 436 N.W.2d at 287. When the detective caught up with the reporter, he once again told the reporter to leave the area. When the reporter refused, the detective arrested him for disorderly conduct.

¶16 The court began its analysis by noting that the reporter's conduct did not fall into one of the six categories specifically prohibited by statute. *See* ***id.*** at 541, 436 N.W.2d at 288. Therefore, the court considered whether the conduct was "otherwise disorderly." Reviewing Wisconsin case law, the court recognized "the importance of a coalescing of conduct and circumstances." *See* ***id.*** at 542, 436

[3] In a few short sentences, Raven does argue in her reply brief, that her conduct did not have a tendency to cause or provoke a disturbance. However, we do not consider arguments that are undeveloped by legal reasoning. *See* ***Truttschel v. Martin***, 208 Wis.2d 361, 369, 560 N.W.2d 315, 319 (Ct. App. 1997).

N.W.2d at 288-89. In previous cases, the court concluded that disorderly conduct often resulted from "'the inappropriateness of specific conduct because of the circumstances involved.'" *See* ***id.*** at 543, 436 N.W.2d at 289 (quoting ***Wernstein***, 60 Wis.2d at 672-73, 211 N.W.2d at 439).

¶17 In examining the facts of the case, the court stated that the detective was responsible for excluding all but emergency personnel from the crash area. He did not know if there were crash survivors; whether there was a threat of fire or explosion; or why the plane crashed. *See* ***King***, 148 Wis.2d at 543, 436 N.W.2d at 289. The court noted the reasonableness of the detective's order, stating that the presence of non-emergency personnel might inhibit rescue efforts and efforts to gather evidence. Finally, the court stated "[i]n a situation which has the potential for significant crowd control problems, common sense dictates that if one person is allowed to openly defy the authority of an officer in charge, others may soon follow." ***Id.*** at 543-44, 436 N.W.2d at 289.

¶18 Similarly, there was sufficient evidence to demonstrate that Raven's actions satisfied the "otherwise disorderly conduct" element under § 947.01, STATS. The officers were dispatched to investigate the 911 call made from Raven's apartment. Raven contends that Pelton should have left immediately, when she told her that she was withdrawing her complaint. However, despite the fact that Raven stated she wished to withdraw her complaint, the officers needed to ensure that she made the call and that there was no emergency. Raven's refusal to answer the questions of the dispatcher or of Pelton only compounded the problem.

¶19 Furthermore, the officers' concerns were heightened when they saw Raven had a gun in her hand. Raven refused to drop the gun at Pelton's request.

It was only after McChesney drew his firearm and asked her three times to drop the gun, that she finally relented. As in ***King***, we believe the reasonableness of the order was obvious. Therefore, we conclude that under the undisputed facts of record, the officer's order to drop the weapon was reasonable and that the officer reasonably feared for his safety. Accordingly, we conclude that the evidence, viewed in the light most favorable to upholding the jury's verdict, demonstrates that Raven's actions constituted "otherwise disorderly conduct" under § 947.01, STATS.

CONCLUSION

¶20 We conclude that the criminal complaint stated facts sufficient to show probable cause to believe that Raven committed disorderly conduct. We also conclude there was sufficient evidence for the jury to find Raven guilty of disorderly conduct while armed. Therefore, we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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