

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 19, 2016

Diane M. Fremgen
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1695

Cir. Ct. No. 2014JV892

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE INTEREST OF J.L.M., A PERSON UNDER THE AGE OF 17,

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

J.L.M.

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL J. DWYER, Judge. *Affirmed.*

¶1 BRASH, J.¹ J.L.M. appeals from a dispositional order adjudicating

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

him delinquent of robbery with the use of force as a party to a crime. J.L.M. contends that the evidence adduced during the course of the trial is insufficient as a matter of law to support the circuit court's finding that J.L.M. was delinquent. We disagree and affirm.

BACKGROUND

¶2 On August 14, 2014, M.H. reported that he was biking home from work on the Oak Leaf Trail in Shorewood at approximately 5:45 p.m., when he encountered four individuals obstructing his path. As M.H. approached their location, the four spread across the path in close proximity to each other. M.H. further indicated that when he tried to go between these individuals one of them grabbed him, at which point he fell off of his bike and was thereafter struck by multiple individuals, resulting in injuries to his face, head, legs, and arms. While M.H. was on the ground these individuals took his bike and his backpack, which contained his work laptop, a money clip, several credit cards, and other items and personal effects.

¶3 Police officers from the Village of Shorewood and the University of Wisconsin-Milwaukee responded to the area pursuant to a call from M.H. M.H. provided a description of each of the subjects and shortly thereafter observed two of the subjects exit the woods on the west side of the Oak Leaf Trail, heading in a southerly direction.² M.H. alerted the police to the presence of these individuals and identified them as being involved in the incident. They were taken into

² Two subjects exited the woods adjacent to the Oak Leaf Trail several minutes before the police arrived, and were later identified as Louis King and J.J.L.

custody and identified as T.D.P. and J.L.M. After these two subjects were taken into custody, a Shorewood police officer walked back to where he saw J.L.M. exit the wooded area and he located the blue bicycle belonging to M.H.

¶4 On October 14, 2014, the State filed a delinquency petition under chapter 938, charging J.L.M. with one count of robbery with the use of force, as a party to a crime, contrary to WIS. STAT. §§ 943.32(1)(a) and 939.05. The matter proceeded to trial, which began on January 8, 2015 and concluded on February 6, 2015. Upon the conclusion of the trial, the court found J.L.M. delinquent of the charged offense. On March 2, 2015, the court conducted a dispositional hearing wherein J.L.M. received an imposed and stayed sentence of one year at Lincoln Hills School for Boys and was placed on probation for a period of one year under certain terms and conditions. J.L.M. filed no post-disposition motions, but did file a notice of appeal on August 17, 2015. This appeal follows.

DISCUSSION

¶5 On appeal, J.L.M. argues that the evidence adduced during the course of the trial is insufficient as a matter of law to support the circuit court's finding that J.L.M. was delinquent of robbery by the use of force as a party to a crime. Although J.L.M. acknowledges that he moved M.H.'s bike during the course of this incident, J.L.M. contends that there is insufficient evidence to establish that he intended to deprive M.H. permanently of possession of his bike. We disagree.

¶6 We review the issue of sufficiency of the evidence to support an adjudication of delinquency pursuant to a well established standard. *See State v. Banks*, 2010 WI App 107, ¶43, 328 Wis. 2d 766, 790 N.W.2d 526. We will not reverse a conviction for lack of sufficient evidence “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.” See *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). This rule is the same regardless of whether the finder of fact is a judge or a jury. *Krueger v. State*, 84 Wis. 2d 272, 282, 267 N.W.2d 602 (1978). Additionally, “the standard for reviewing the sufficiency of the evidence to support a conviction is the same in either a direct or circumstantial evidence case.” *Poellinger*, 153 Wis. 2d at 501. Whether the evidence is sufficient to support the conviction is a question of law that we review *de novo*. See *State v. Booker*, 2006 WI 79, ¶12, 292 Wis. 2d 43, 717 N.W.2d 676.

¶7 A function of the trial court, as the finder of fact in this instance, is “to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Poellinger*, 153 Wis. 2d at 506. As such, the trial court, as the trier of fact, “is free to choose among conflicting inferences of the evidence and may, within the bounds of reason, reject [an] inference which is consistent with the innocence of the accused.” *Id.* (italics omitted). We must accept and follow the inferences drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law. See *State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989).

¶8 We conclude that the evidence presented at trial in the present case is of sufficient probative value that a reasonable trier of fact could find that the State met its burden of proof beyond a reasonable doubt in adjudicating J.L.M. delinquent of robbery by the use of force as a party to a crime. The trial court, as the finder of fact, found that there was overwhelming credible evidence supporting its finding that all four individuals participated in this offense and that J.L.M.’s testimony was not credible.

¶9 At trial, M.H. testified that he was riding his bike home from work on August 14, 2014 on the Oak Leaf Trail, when he encountered four individuals obstructing his path. M.H. testified that as he tried to go between them, one of those individuals grabbed him, which caused him to fall off of his bike. M.H. further testified that these four individuals were all together and that while M.H. was on the ground he was struck by multiple individuals, which resulted in injuries to his face, head, legs, and arms. M.H. also testified that while he was on the ground, these individuals took his bike and his backpack, which contained work related property and other items and personal effects.

¶10 Patrick Ross was also on the Oak Leaf Trail that day and testified that he was riding his bike ahead of M.H. when he saw four individuals walking “single file” off the trail, “approximately 18 inches apart from one another.” Ross testified that when they noticed him, they separated into groups of two on either side of the path. Ross testified that he felt threatened and believed these individuals to be working in concert with one another. Ross further testified that he anticipated being ambushed, so he accelerated and was able to ride between them. Additionally, Ross testified, that after approximately fifteen minutes he returned to the same general area where he originally encountered these four individuals, and now saw M.H. with a variety of cuts and contusions. Ross also saw the four individuals that he had encountered, now in custody.

¶11 Alex Schara was also on the Oak Leaf Trail on August 14, 2014. Schara testified that he was running with a friend when he observed “four males beat a man.” Schara testified that while he could not definitively say that all four were actually striking the victim, they were all around him and appeared to be acting together. Schara also saw these individuals take M.H.’s bike and backpack, and ultimately run off into the bushes on the west side of the trail. Schara further

testified that he subsequently saw two of these individuals “come back out and cross the trail.”

¶12 Evan Bretzmann was also running on the Oak Leaf Trail that evening with his wife, Amanda, approximately fifty yards behind Schara. Bretzmann testified that he saw four youths “kind of crouched down or huddled around in a circle.” Schara testified that it was almost “like a football huddle,” and that “they were within two feet of each other.” Bretzmann also testified that these four individuals got up and moved southbound down the trail, and at that point he saw M.H. lying on the ground, looking as if he had been beaten. Additionally, Bretzmann testified that M.H. “was kind of out of it,” and that M.H. pointed down the trail and said that he was beat up by some boys, and that they had taken his bag and his bike and run off. Bretzmann further testified that he subsequently saw two of the individuals coming out of the woods on the west side of the trail, and they were walking a bike, and that one of the two had removed his shirt.

¶13 Diane Bates, a human service worker for Milwaukee County also testified with regard to this matter. Bates testified that she reviewed police reports relative this incident to make a recommendation to the District Attorney’s office for disposition. Bates testified that as a part of this assessment, she met with J.L.M. and his parents. Bates further testified that after reading J.L.M. his rights, he indicated that while he did not hit M.H., he did step over M.H. and take the bike, while the others were hitting M.H. Bates also indicated that J.L.M. confirmed the names of his co-actors, namely Louis M. King, J.J.L. and T.D.P.

¶14 Officer Cy Kaderlik of the Village of Shorewood Police Department was on duty on August 14, 2014 and testified that he initially responded to a

residence on North Morris in the Village of Shorewood where two subjects had been detained. Kaderlik further testified that once those individuals were secured, he continued to search for the two remaining suspects. Kaderlik testified that it was at this point that he observed two subjects exit the woods, one of whom was J.L.M., one block south of where the crime occurred, walking in a southerly direction. Kaderlik also testified that once these other subjects were taken into custody, he “walked back ... into the wooded area [where] I found a blue bicycle which I then radioed to Officer Rieder that she confirmed was the victim’s bicycle.” Kaderlik further testified that this was the same area from which he saw J.L.M. and T.D.P. exit.

¶15 Other officers from Shorewood and the University of Wisconsin-Milwaukee testified with regards to this matter, confirming the recovery of M.H.’s bicycle and backpack as well as his laptop and other items of personal property, some of which was in the possession of the other individuals involved in this crime.

¶16 J.L.M. also testified during the course of this trial indicating that while he knew T.D.P., he only knew J.J.L. and King from playing basketball. J.L.M. testified that on August 14, 2014, after playing basketball, he and T.D.P. were going to a skate park, and that while J.J.L. and King followed them, they were not together. J.L.M. testified that after M.H. rode past him and T.D.P. on the path, something happened involving J.J.L. and King, but he and T.D.P. were not involved. J.L.M. testified that he heard M.H. scream and at that point he and T.D.P. were separated from J.J.L. and King by seven to ten feet. J.L.M. further testified that at that point he turned around, but then he and T.D.P. just kept walking. J.L.M. also testified that he had no idea what J.J.L. and King were going to do and that he had no agreement with those individuals. J.L.M. further testified,

however, that he subsequently went back because T.D.P. indicated that he was going to get the bike, and as they got closer to the bike he pushed T.D.P. out of the way, took the bike and shoved it into the woods. In contrast, J.L.M. also testified that he had no intent to steal M.H.'s bike, and also denied being involved in taking the bike away from M.H. J.L.M. further testified that he and T.D.P. then went into the woods to determine where they were.

¶17 The elements of the crime in this case that must be established beyond a reasonable doubt are: that M.H. was the owner of property; that J.L.M. took and carried away property from the person or the presence of M.H.; that J.L.M. took the property with the intent to steal; and, that J.L.M. acted forcibly. *See* WIS JI—CRIMINAL 1479. This instruction further provides that one cannot look into a person's mind to find intent, but that it must be found, if found at all, from an individual's acts, words, and statements, if any, and all the facts and circumstances of a case bearing upon intent. *See id.* J.L.M. is further charged with this offense as a party to a crime, which requires that he was concerned in the commission of this crime by either directly committing it or by intentionally aiding and abetting the person(s) who directly committed it. *See* WIS JI—CRIMINAL 400.

¶18 The trial court, as the finder of fact, found that evidence in this case was very strong that four individuals assaulted M.H. Ross's testimony was unequivocal that all four individuals were together and that he felt threatened by these individuals. Schara testified that while he could not definitively say that all four individuals were actually striking M.H., they were all around him and appeared to be acting together. Bretzmann, who was behind Schara, confirmed that he saw four youths were crouched down, as if in a football huddle around M.H., within several feet of each other. Bretzmann also testified that he later saw

two of the individuals emerge from the woods on the west side of the trail, one of whom had removed his shirt, and that they were walking a bike. The testimony of M.H. also confirms that J.L.M. played an active role in this event, starting with J.L.M.'s original involvement in blocking M.H.'s path on the Oak Leaf Trail.

¶19 J.L.M. in his statement to Bates confirms his participation in this crime when he acknowledged that he stepped over M.H. to get to and take the bike while others were hitting M.H. on the ground. This, taken in conjunction with the other evidence received during the trial, is sufficient to sustain the trial court's determination. J.L.M.'s testimony, while different than his statement to Bates, nonetheless confirms that he took M.H.'s bike, and the trial court found that in reviewing the totality of the evidence, J.L.M.'s trial testimony was not credible.

¶20 As discussed, intent is clearly an element of this offense in the taking of that property belonging to M.H. by either directly taking it or by intentionally aiding and abetting those directly concerned in the commission of this crime. This determination is based upon an individual's acts, words, and statements, if any, and all the facts and circumstances of a case bearing upon intent. Looking therefore to the evidence that was adduced during the course of this trial, we conclude that the State has met its burden of proof to sustain an adjudication of delinquency.

¶21 For the foregoing reasons, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

