

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 27, 2005

Cornelia G. Clark
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. 2004AP2003-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2003CM160

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RONNIE A. MALLOY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County:
JOHN R. RACE, Judge. *Affirmed.*

¶1 ANDERSON, P.J.¹ Ronnie A. Malloy appeals from a judgment of conviction for carrying a concealed weapon, a knife, contrary to WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

§ 941.23. He argues that the evidence was insufficient to support the jury's finding that he was carrying a "dangerous weapon" as defined in WIS. STAT. § 939.22(10). We reject Malloy's argument and affirm the conviction.

FACTS

¶2 On March 28, 2003, police officers responded to a call concerning an altercation involving Malloy at a gas station in the township of Delavan. The responding officers arrested Malloy for disorderly conduct. Following the arrest, Malloy informed the officers that he had a knife on his person. The knife was enclosed in a leather case described by one of the officers as a "sheath" and attached to Malloy's belt. Malloy was wearing a vest that covered the knife. The knife had a total length of six to eight inches and a sharp, pointed blade that measured approximately four inches long. The blade of the knife could be folded into the knife's handle. Subsequently, the State charged Malloy with, among other things, carrying a concealed weapon contrary to WIS. STAT. § 941.23.

¶3 At the jury trial, Malloy acknowledged that the knife was in his possession at the time of his arrest. He testified that he carried the knife to work every day because he used it to cut open boxes and to complete various other job-related activities. In addition, he stated that he used the knife when he went fishing.

¶4 The trial court instructed the jury that to find Malloy guilty of carrying a concealed weapon, it had to find that the knife he was carrying at the time of his arrest was a "dangerous weapon." The court defined "dangerous weapon" as "any device designed as a weapon and capable of producing death or great bodily harm or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily

harm.” After deliberation, the jury found Malloy guilty. Malloy appeals from the judgment of conviction.

STANDARD OF REVIEW

¶5 The standard governing appellate review of the sufficiency of evidence to support a conviction is well established. It is, in pertinent part:

[A]n appellate court may not reverse a conviction unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.

State v. Poellinger, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

DISCUSSION

¶6 WISCONSIN STAT. § 941.23 provides that “[a]ny person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor.” A “dangerous weapon” is defined as:

[A]ny firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon, as defined in s. 941.295 (4); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

WIS. STAT. § 939.22(10). Malloy argues that the State failed to set forth facts demonstrating that the knife he was carrying at the time of his arrest was

“designed as a weapon.”² He compares the knife to a steak knife or other kitchen knife that is not inherently a weapon by nature and describes it as a “moderately large folding knife.”

¶7 In *State v. Horton*, 151 Wis. 2d 250, 252, 445 N.W.2d 46 (Ct. App. 1989), the defendant was convicted of second-degree murder and endangering safety by conduct regardless of life, both while using a knife as a “dangerous weapon.” At the time of his arrest, the defendant admitted stabbing two youths with a steak knife. *Id.* at 253. At trial, the defendant claimed that the weapon was “a fishing knife that he carried as a tool to assist him in vandalizing video machines.” *Id.* at 254. The trial court instructed the jury that a “dangerous weapon” was “any device designed as a weapon and capable of producing death or bodily harm.” *Id.* at 255. The jury determined that the knife in question, which had never been found, was a dangerous weapon. *Id.* at 253, 255. On appeal, the defendant argued that the evidence, especially in light of the defendant’s own in-court description of the knife as a fishing knife, was insufficient to allow the jury to find beyond a reasonable doubt that the knife was designed as a weapon. *Id.* at 260.

¶8 We concluded that the circumstantial evidence presented by the State was “sufficient to allow the jury to conclude beyond a reasonable doubt that the knife in question was designed as a weapon.” *Id.* at 261. We explained that the jury “was not obligated to reject the circumstantial evidence in favor of [the

² Malloy suggests that the State concedes that the knife was not “designed as a weapon” because it referred to the knife as a “hunting knife” in its brief. We refuse to read this passing reference during the State’s recitation of the facts of the case as a concession undermining the State’s entire argument on appeal.

defendant's] statements of the knife's purposes." *Id.* We noted that circumstantial evidence demonstrated that the knife "had a long blade, was very sharp, and was carried in a sheath." *Id.* at 260. We further observed that a photograph of the sheath was contained in the record and showed a "case that [could] accommodate a long-bladed object and that has an extended backing against which could rest a hilt." *Id.* at 260-61. Thus, we determined that there was circumstantial evidence "that [the defendant's] weapon followed the design of a dagger." *Id.* at 261.

¶9 Here, as in *Horton*, the jury had before it Malloy's statements concerning the knife's purposes—that he used it as a tool at work and while fishing. However, here, as in *Horton*, the jury also had before it evidence that the knife followed the design of a weapon. It does not matter that we characterized the knife in *Horton* as "a dagger" and the knife in this case may not necessarily lend itself to such a characterization. Simply put, as in *Horton*, the jury in this case was entitled to reject Malloy's self-serving statements concerning the knife's design and purposes and to draw upon the other evidence to conclude that the knife followed the design of a weapon.

¶10 The knife was carried in a case described by an arresting officer as a sheath. The knife itself was State's Exhibit 6 and several photographs of the knife are contained in the record, *see* Appendix. The photographs show a knife with a very sharp, pointed blade approximately four inches in length. An arresting officer testified that the knife had a total length of six to eight inches and a blade with a "razor sharp" tip. Viewing the evidence in the light most favorable to the State, we find it sufficient to allow the jury to conclude beyond a reasonable doubt that the knife in question was not akin to a steak knife or kitchen knife, as Malloy

suggests, but was instead designed as a weapon and was capable of producing great bodily harm.³

By the Court.—Judgment affirmed.

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

³ Malloy also intimates that because there is no evidence that he used or had the intent to use the knife in a manner likely to produce death or great bodily harm, there was no basis for the jury’s conclusion that the knife was a “dangerous weapon.” However, we need not reach the question of his intent because we conclude that there was sufficient evidence for the jury to find that the knife was “designed as a weapon and capable of producing death or great bodily harm.” *See* WIS. STAT. § 939.22(10).

APPENDIX

