

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 28, 2006

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. 2005AP464-CR

Cir. Ct. No. 2003CF5721

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TAVARES JAMES ROSEMOND,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEAN W. DIMOTTO, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Tavares Rosemond appeals from the judgment of conviction entered against him. He argues that the evidence at trial was not sufficient to prove the asportation element of kidnapping. See WIS. STAT.

§ 940.31(1)(a) (2003-04).¹ We conclude there was sufficient evidence to prove this element and we affirm.

¶2 Rosemond was convicted of kidnapping, armed robbery, both as a party to a crime, sexual assault, and possession of marijuana. The relevant facts established that Rosemond and another man armed with a gun, followed the victim into the lobby of her apartment building. At some point during the incident, Rosemond moved the victim to an area behind some elevators, where he then sexually assaulted her. The victim testified that Rosemond moved her two to three feet in the lobby of the building, and then pulled her five feet behind the elevator.

¶3 Rosemond argues that this evidence was insufficient to establish that he transported the victim within the meaning of the kidnapping statute. *See* WIS JI—CRIMINAL 1280.² When considering a challenge to the sufficiency of the evidence, this court must affirm “if it finds that the jury, acting reasonably, could have found guilt beyond a reasonable doubt.... [T]he jury verdict will be overturned only if, viewing the evidence most favorably to the state and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt.” *State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation and emphasis omitted). If more than one inference can be drawn, the inference which supports the jury’s verdict must be followed unless the evidence was incredible as a matter of law. *Id.* at 377. “[I]f any possibility exists that the jury *could* have drawn the

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

² WIS JI—CRIMINAL 1280 KIDNAPPING - § 940.31(1)(a): “The first element requires that the defendant transported (name of victim) from one place to another.”

appropriate inferences from the evidence adduced at trial to find the requisite guilt, we will not overturn the verdict even if we believe that a jury should not have found guilt based on the evidence before it.” *Id.*

¶4 The jury instruction for kidnapping requires the State to prove that the defendant transported the victim “from one place to another.” WIS JI—CRIMINAL 1280. Rosemond argues that the evidence in this case showed that he moved the victim between three and twenty-eight feet. He further argues that “commonsense dictates” that to establish the transportation element of kidnapping, the distance must be greater. We disagree.

¶5 The focus of the kidnapping statutes “is generally on the harm caused by the confinement.” *State v. Wagner*, 191 Wis. 2d 322, 328, 528 N.W.2d 85 (Ct. App. 1995) (citation omitted). “[T]he critical aspect of the asportation element [of kidnapping] is ‘not the distance the victim is transported but the unlawful compulsion against the will to go somewhere.’” *Id.* (citation omitted). It is enough that victims were forcibly moved only a short distance within a house. *Id.* The forced movement of a person from one room to another within a building is also sufficient to satisfy this element. *Id.*

¶6 In this case, the evidence established that Rosemond forcibly moved the victim a distance eight to twenty-eight feet from the lobby to behind the elevators. He moved her from the well-lit lobby with glass doors opening onto the street, to a less visible place where he assaulted her. This evidence was sufficient to establish that Rosemond transported the victim within the meaning of the statute. Consequently, we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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

