

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 16, 2001

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.

No. 00-3401-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES H. WASHINGTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
JOHN W. ROETHE, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. James Washington appeals from a judgment convicting him of armed robbery as a repeat offender. He claims the evidence was insufficient to support his conviction because the victim lacked a reasonable belief that he had a weapon. We disagree and affirm.

¶2 Armed robbery occurs when a person, with intent to steal, takes property from the person or presence of the owner “by use or threat of use of a dangerous weapon.” WIS. STAT. § 943.32(2) (1999-2000).¹ The State need not prove that a defendant was in fact armed with a dangerous weapon; it is sufficient to show that the victim reasonably believed the defendant was so armed. *State v. Witkowski*, 143 Wis. 2d 216, 219, 420 N.W.2d 420 (Ct. App. 1988). In reviewing the sufficiency of the evidence to support a criminal conviction, we will not set aside a jury’s determination unless the evidence, viewed in the light most favorable to the State, is so lacking in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Badker*, 2001 WI App 27, ¶9, 240 Wis. 2d 460, 469-70, 623 N.W.2d 142.

¶3 Here, the victim testified that the robber entered the store office, pushed her to the ground and told her to stay down and close her eyes. The robber asked the victim where the keys to the safe were and said, “[D]on’t lie to me bitch, or I’ll slice you.” When the prosecutor asked the victim whether she believed the robber had a weapon, she responded, “I didn’t — I was scared that he did. I didn’t know for sure, but I assumed he could have because he threatened to slice me”

¶4 Washington argues that the victim’s statement that she “assumed” the robber “could have” a weapon was insufficient to prove that she *believed* he in fact had a weapon. We are not persuaded by the semantic distinction. Our analysis of a victim’s belief focuses on the reasonableness of his or her subjective perception of danger. *State v. Hubanks*, 173 Wis. 2d 1, 13, 496 N.W.2d 96

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

(Ct. App. 1992). The victim testified that she was scared the robber had a weapon because he threatened to “slice” her. The jury was entitled to infer that the victim’s fear was based upon a belief that the robber was armed with a knife, and that the belief was reasonable given the robber’s explicit threat. It was not necessary that the victim’s belief rise to the level of absolute certainty. We are satisfied the evidence was sufficient to support the conviction.

By the Court.—Judgment affirmed.

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

