

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 4, 2002

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. 00-3403-CR
STATE OF WISCONSIN**

Cir. Ct. No. 98-CF-1822

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NANCY R. LAMON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: EDWIN C. DAHLBERG, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Nancy Lamon appeals from a judgment of conviction and an order denying postconviction relief. The issues are whether the jury should have been instructed on an additional lesser-included offense, and whether the trial court erred by concluding that Lamon failed to prove that the prosecutor did not have a race-neutral reason to strike one juror. We affirm.

¶2 Lamon was charged with and convicted of armed robbery. At trial the jury was instructed on armed robbery and the lesser-included offense of robbery. In addition, Lamon requested an instruction on theft from a person, WIS. STAT. § 943.20(1) and (3)(d)2 (1999-2000),¹ which differs from robbery primarily by lacking the element of force. Lamon argues that the trial court erred by denying this request. The parties agree on the legal standard governing a court's decision to instruct on a lesser-included offense, and that our standard of review is de novo. *See State v. Foster*, 191 Wis. 2d 14, 23, 528 N.W.2d 22 (Ct. App. 1995).

¶3 The victim testified that Lamon sat in the front seat of his car and held an object against his side while another person demanded his wallet, which he then surrendered. The trial court concluded that there was no reasonable basis for the jury to acquit on armed robbery and robbery, but then convict on the lesser-included offense of theft from a person. Lamon argues that the victim was not a credible witness for various reasons, and that the jury could therefore have disbelieved his testimony about the use of force during the incident. We disagree. We do not see a reasonable basis for the jury to conclude that the victim's testimony about the incident was generally truthful, except as to the use of force. If the jury had doubts about the victim's credibility, it might have disbelieved his entire story and acquitted Lamon, but there was no reason in the evidence for the jury to disbelieve only the part about the use of force.

¶4 Lamon also argues that the court erred by allowing the prosecutor to use a peremptory challenge to remove the only black person from the jury panel.

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

The parties agree that to establish this claim Lamon must first make a prima facie showing that the prosecutor exercised the strike on the basis of race; that if she does so, the burden shifts to the State to articulate a race-neutral explanation; and that the trial court then determines whether the defendant carried her burden of proving purposeful discrimination. See *Hernandez v. New York*, 500 U.S. 352, 358-59 (1991). We review each of these determinations using the “clearly erroneous” standard. *State v. Lopez*, 173 Wis. 2d 724, 729, 496 N.W.2d 617 (Ct. App. 1992).

¶5 Lamon raised this issue promptly after the State made the challenge. The trial court did not expressly rule on whether Lamon made a prima facie showing, but the court did ask the prosecutor why the strike was made. The prosecutor said that she struck the juror because he had the same last name as other people who have been prosecuted, his address is in a high-crime area, there have been numerous police contacts at his address, she believed he had not answered truthfully when she asked the full panel if any had had contact with law enforcement officers, and he indicated his employment “varies.” After hearing further argument, the court concluded that the State had “just cause for the strike.”

¶6 On appeal Lamon argues that the reasons offered by the prosecutor were not race-neutral. However, we conclude the court’s ruling was not clearly erroneous. The prosecutor offered plausible reasons supporting her decision to strike that juror. It is true that the prosecutor might have been able to clarify her concerns by questioning the juror without striking him, but it was not clearly erroneous for the court to accept the prosecutor’s explanation that she did not do that because she thought some of the juror’s responses to questions to the full venire panel were not “completely forthright and honest,” and that she did not want to single out this juror for further questioning.

By the Court.—Judgment and order affirmed.

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

