COURT OF APPEALS
DECISION
DATED AND FILED

December 4, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-0976-CR **Cir. Ct. No. 99-CF-576**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CARLTON R. HOLLAND,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Carlton Holland appeals from a judgment, entered upon a jury's verdict, convicting him of one count of second-degree sexual assault while aided or abetted by another and one count of child enticement, as party to a crime. Holland argues that the evidence at trial was insufficient to support his conviction. We reject his argument and affirm the judgment.

BACKGROUND

¶2 In September 1999, a criminal complaint was filed against Holland alleging that he and three other men forced Trista B., then sixteen years old, to have sexual intercourse with them. Holland fled the state before his trial, initially scheduled for March 2000, and was ultimately returned on a bench warrant. Holland was convicted and sentenced to six years in prison. This appeal followed.

ANALYSIS

¶3 Holland argues that the evidence at trial was insufficient to support his conviction for second-degree sexual assault.[1] Whether the evidence supporting a conviction is direct or circumstantial, we utilize the same standard of review regarding its sufficiency. ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We must uphold Holland's 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." ***Id.*** If there is a possibility that the jury "could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt," we must uphold the verdict even if we believe that the jury "should not have found guilt based on the evidence before it." ***Id.*** at 507. It is the jury's function to decide the credibility of witnesses and reconcile any inconsistencies in the testimony. ***State v. Toy***, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985). Thus, if more than one inference can be drawn from the evidence, this court will follow the inference that supports the

[1] Holland does not raise any issues challenging his conviction for child enticement.

jury's finding "unless the evidence on which that inference is based is incredible as a matter of law." ***Poellinger,*** 153 Wis. 2d at 506-07.

¶4 Here, the trial court instructed the jury that in order to find Holland guilty of second-degree sexual assault while aided or abetted by another, the State had to prove beyond a reasonable doubt that: (1) Holland had sexual contact or intercourse with Trista; (2) Trista did not consent to the sexual contact or intercourse; and (3) Holland was aided and abetted by one or more other persons in having sexual contact or intercourse with Trista. *See* WIS. STAT. § 940.225(2)(f) (1999-2000); WIS JI—CRIMINAL 1214 (1997).

¶5 At trial, Holland did not dispute that sexual contact occurred with Trista; rather, he argued that the sexual contact was consensual. To that end, on appeal, Holland attacks various testimonial evidence as insufficient to prove that the sexual contact was nonconsensual. Specifically, Holland contends that: (1) Trista's medical examination showed no sign of sexual assault; and (2) Trista's testimony regarding the sexual assault was so incredible that the jury was required to disregard her testimony as a matter of law.

¶6 Holland emphasizes the lack of physical evidence as proof that the sexual contact was consensual. While the pelvic exam performed on Trista showed "no evidence of any bruising, abrasions or laceration, and that there [was] no vaginal drainage," the medical expert who examined Trista testified that such injury would not be an automatic result of sexual assault in a sixteen-year-old female due to the high level of estrogen in a young female body. Thus, despite the lack of physical evidence, the jury could reasonably conclude that Holland had assaulted Trista.

¶7 With respect to Trista's testimony, Holland challenges the "inherently incredible nature" of Trista's claim that she performed fellatio on Holland while she was lying down and he was standing. Evidence is inherently incredible as a matter of law if it "conflicts with the laws of nature or with fully established or conceded facts." ***State v. Tarantino***, 157 Wis. 2d 199, 218, 458 N.W.2d 582 (Ct. App. 1990). Despite Trista's testimony, the jury heard evidence that Holland was kneeling during the fellatio. A jury is free to piece together the bits of testimony it found credible to construct a chronicle of the circumstances surrounding the crime. *See* ***State v. Sarabia***, 118 Wis. 2d 655, 663-64, 348 N.W.2d 527 (1984). Further, "[f]acts may be inferred by a jury from the objective evidence in a case." ***Shelley v. State***, 89 Wis. 2d 263, 273, 278 N.W.2d 251 (Ct. App. 1979). That Trista testified that Holland had been standing, when he had actually been kneeling, does not render her entire testimony so patently incredible as to require the jury to disregard it as a matter of law.

¶8 Because Trista's clothing was not torn, Holland also challenges Trista's testimony that her clothing was forcefully ripped off of her. On cross-examination, Trista was asked to describe how her clothing had been removed. She consistently testified that the clothing was "forcefully removed," and agreed with defense counsel's characterization that the clothing had been "ripped off" of her. In context of the cross-examination, the jury could have reasonably concluded that the term "ripped off" did not indicate a tearing of Trista's clothing, so much as it indicated a "forceful" as opposed to "gentle" removal of the clothing.

¶9 Holland additionally questions Trista's failure to inform anyone of the claimed assault until the day after the assault allegedly occurred. The jury could reasonably accept Trista's testimony that she was afraid to tell anyone about

the attack. Because we conclude that the jury heard sufficient evidence to support Holland's conviction, we affirm the judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).