

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 20, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2009AP889-CR

Cir. Ct. No. 2007CF5874

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

QUOVADIS CONYICE EVANS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MARTIN J. DONALD, Judge. *Affirmed.*

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

¶1 CURLEY, P.J. Quovadis Conyice Evans appeals from the judgment, entered following a jury trial, convicting him of nine counts of false

imprisonment, as a party to the crime, contrary to WIS. STAT. §§ 940.30¹ and 939.05 (2007-08). Evans challenges his conviction for four of the nine counts. He contends that because the separate victims of those counts did not testify at trial, there was insufficient evidence to establish that they were imprisoned without their consent, and therefore, the State failed to establish those victims were falsely imprisoned. Because the circumstantial evidence was sufficient to support Evans's conviction for the challenged counts, we affirm.

I. BACKGROUND.

¶2 The State filed a criminal complaint against Evans charging him with nine counts of false imprisonment, contrary to WIS. STAT. § 940.30, as a party to the crime, contrary to WIS. STAT. § 939.05, while armed with a dangerous weapon, contrary to WIS. STAT. § 939.63. The victims of those charges, most of whom were under the age of eighteen at the time, were Clea B. (count three), Nicholas B. (count four), Rashod H. (count five), Kembelic G. (count six), Milan S. (count seven), Jedan S. (count eight), Quaran S. (count nine), Nathan B. (count ten), and Nigel B. (count eleven). Evans was also charged with two counts of second-degree sexual assault of a child, contrary to WIS. STAT. § 948.02(2), and

¹ WISCONSIN STAT. § 940.30 (2007-08) provides: "Whoever intentionally confines or restrains another without the person's consent and with knowledge that he or she has no lawful authority to do so is guilty of a Class H felony."

All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

one count of second-degree sexual assault, contrary to WIS. STAT. § 940.225(2).² Evans was charged as a persistent repeater under WIS. STAT. § 939.62 for all twelve counts and all charges were tried before a jury.

¶3 At trial, Nicholas B., Nathan B., Nigel B. and Rashod H. did not appear to testify. However, testimony was received from the remaining victims and Nicole B., the mother of seven of the nine victims. The testimony of the victims and Nicole B. was substantially the same. On November 23, 2007, Evans and two other individuals, Booker Brown and Joseph Roschyk, entered the residence of Nicole B. Nicole B. was not home at the time; however, six of her seven children—Clea B., Nicholas B., Nathan B., Milan S., Jaden S., and Quaran S., and two unrelated individuals—Rashod H. and Kembelic G.—were present.

¶4 According to Clea B., she, Nicholas B. and Rashod H. were alone in a room when Evans, Brown and Roschyk entered the room with a book bag and shut the door. Clea B. testified that Evans ordered Nicholas B. and Rashod H. to lie on the floor and told Roschyk to “tie them up.” She testified that both Evans

² The two second-degree sexual assault of a child charges stem from two sexual encounters Clea B. claimed to have had with Evans. Clea B. testified that in September 2007, she was sleeping at Evans’s aunt’s house and when she awoke, her pants were pulled down to her knees “[a]nd [Evans] was licking my vagina.” Clea B. testified that later that month, she was again sleeping at Evans’s aunt’s house when Evans woke her up and “asked [her] to have sex with him or else he was gonna kill [her] brother.” She testified that she then had sexual intercourse with Evans. The second-degree sexual assault charge arises out of a claim by Nicole B. that on November 23, 2007, she had sexual intercourse with Evans so that Evans would release her children and their two friends, who Evans had restrained in the upstairs portion of her house, and to prevent them from being injured. Nicole B. testified that Evans “told me, basically, that I had no – no other choice. What was I going to do? And I tried to deter him again, and he said, ‘Well, it’s either you do this or I’m going to go back upstairs; and you know; I’m going to hurt them.’” She testified that it was her belief that if she did not have sexual intercourse with Evans, “he would hurt [her] children.”

and Brown had guns, that Roschyk bound their ankles and hands behind their backs with duct tape, and that all three men were wearing latex gloves. Clea B. testified that during this encounter, Evans told her that she should not have lied to her family about having sexual relations with him in September 2007. She testified that she, Nicholas B. and Rashod H. were then put in a closet. At that point, Kembelic G. entered the room and was duct taped in the same manner and was also placed in the closet.

¶5 Clea B. testified that after she, Nicholas B., Rashod H., and Kembelic G. were placed in the closet, Evans called for Nathan B., Jaden S., Milan S., and Quaran S. Clea B. testified that Evans had shut the closet door, but that she heard him tell her siblings that “it was all my fault” and that Evans then opened the closet door. She testified that Evans also said that “if they try to run, he was gonna shoot them, just be cooperative and everything’s gonna work out.” She testified that Quaran S. was tied up with a shirt and belt, Nathan B. was bound with a rope, and a scarf was tied around Jaden S.’s eyes. She also testified that Evans “put [a] gun in my face and said he should kill me.”

¶6 According to Clea B., all nine of the victims were eventually moved upstairs to Nicole B.’s bedroom. Clea B. testified that after they were moved upstairs, Evans told Roschyk to “go downstairs and clean everything off with bleach ... make sure there’s no type of hair and stuff like that.” She testified that Evans “kept asking us how we wanted to die ... He was telling us how he was going to kill us ... He told us he was going to take us downstairs either one by one and shoot us or put us in the tub face first.” She also testified that Evans twice covered her head with plastic bags and tightened them in the back. She testified at one point, Evans made Nicholas B. take off his shorts and took him downstairs and told Nicholas B. that he was going to shoot him.

¶7 Clea B. testified that eventually, Nicole B. and Nigel B. came home and that Nigel B. entered the room with a gun held to his back and his hands in the air, and that Nigel B. was bound with a computer cord. She testified that Nicole B. and Evans went downstairs for approximately thirty minutes before returning upstairs where Evans told Brown and Roschyk to let everyone go.

¶8 Nicole B. testified that when she arrived home, Evans opened the door and when she turned to go into her room, she observed Rashod H., Kembelic G., Clea B., Nathan B., and Nicholas B. “on the bed tied up,” and that Jaden S., Milan S., and Quaran S. were not tied up at that time. She testified that Nigel B., Nicole B.’s other son, arrived home some time later. She testified that after Nigel B. came upstairs, “[Evans] told Brown to tie him up; and then Brown pushed him on the bed. And I asked him why did he push him, and he said he didn’t like him.” Nicole B. testified that she and Evans went downstairs alone to talk. According to Nicole B., after Evans spoke with her, everyone upstairs was untied and free to go, and the victims agreed not to call the police. Testimony substantially similar to that given by Clea B. and Nicole B. regarding the events that transpired on November 23, 2007, was also received from Kembelic G., Jaden S., Quaran S., and Milan S.

¶9 Nicole B. also testified regarding the absence of her sons Nicholas B., Nathan B., and Nigel B. at trial. She testified that she sent her sons to California because “[t]heir mind is somewhere else, and they weren’t, in my opinion, thinking clearly; so I felt it was best to send them away so nothing happened.” She was “afraid they would do something or something might have been done to them.”

¶10 Evans testified on his own behalf at trial. He claimed that it was Brown who was responsible for the victims being tied up and that it was Brown's intent to kill the entire household.

¶11 The jury returned not guilty verdicts for the sexual assault charges, but found Evans guilty of all nine counts of false imprisonment. Evans was sentenced to a total of twenty-one years of initial confinement and nine years of extended supervision. For counts three through ten, he was sentenced separately to eight years of confinement and three years of extended supervision. For count eleven, he was sentenced to five years of confinement and three years of extended supervision. Counts three, four and five were ordered to run concurrently to each other, but consecutive to any other sentence. Count six was ordered to run consecutive to any other sentence. Counts seven, eight, nine and ten were ordered to run consecutive to count eleven, but concurrent to all other counts. Count eleven was ordered to run consecutive to all other counts. Evans appeals his conviction as to counts four, five, ten and eleven.

II. ANALYSIS.

¶12 Evans contends there was insufficient evidence to support the jury's verdict on false imprisonment with respect to counts four, five, ten and eleven. He claims that without the trial testimony of Nathan B., Nicholas B., Nigel B. and Rashod H., the victims of those counts, the State could not prove that those individuals were imprisoned without their consent.

¶13 "When a defendant challenges a verdict based on sufficiency of the evidence, we give deference to the jury's determination and view the evidence in the light most favorable to the State." *State v. Long*, 2009 WI 36, ¶19, 317 Wis. 2d 92, 765 N.W.2d 557. Furthermore, "[w]e will not substitute our own

judgment for that of the jury unless the evidence is so lacking in probative value and force that no reasonable jury could have concluded, beyond a reasonable doubt, that the defendant was guilty.” *Id.*

¶14 A defendant is guilty of false imprisonment if he or she “intentionally confines or restrains another without the person’s consent and with knowledge that he or she has no lawful authority to do so.” WIS. STAT. § 940.30. In *Long*, the supreme court stated that consent in the context of false imprisonment is established by words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to be confined or restrained. *Id.*, 317 Wis. 2d 92, ¶32. It is well established that consent, or a lack of consent, may be established by circumstantial evidence. *See State v. Champlain*, 2008 WI App 5, ¶38, 307 Wis. 2d 232, 744 N.W.2d 889 (Ct. App. 2007). We have reviewed the record and conclude that here, a reasonable jury could have determined beyond a reasonable doubt from circumstantial evidence that Nathan B., Nicholas B., Nigel B. and Rashod H. did not consent to being restrained by Evans.

¶15 Clea B. testified that Nicholas B. and Rashod H. were forced to lie down on their stomachs at gunpoint and that their ankles and hands were bound with duct tape. She testified that both men were then forced into a closet. Clea B. testified that when Nathan B. entered the room where she, Nicholas B. and Rashod H. were being held, Evans, who remained in possession of a gun, stated that “if they try to run, he was gonna shoot them.” She testified that she was then bound with a rope. Clea B. also testified that while Nicholas B., Rashod H. and Nathan B. were bound, Evans “kept asking us how we wanted to die” and that Evans told them “he was going to take us downstairs either one by one and shoot us or put us in the tub face first.” With regard to Nicholas B., Clea B. testified that

Evans made him remove his shorts, took him downstairs, and told Nicholas B. that he was going to shoot him.” Clea B. testified that when Nigel B. arrived home, he was led into the room where the other victims were being held with a gun to his back and his hands in the air. Nicole B. testified that Nigel B. was pushed onto the bed by Booker, and Clea B. testified that Nigel B. was bound with a computer cord. Based on the testimony at trial, which described a dangerous and threatening situation in which the defendant bound or ordered bound the victims while holding a gun and threatened to kill the victims while they were restrained, the jury could well have inferred that Nicholas B., Rashod H., Nathan B. and Nigel B. did not consent to being restrained.³ Accordingly, we affirm the judgment of the trial court.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

³ Evans also contends that, provided we determine that the evidence was insufficient to sustain his convictions for counts four, five, ten and eleven, we should remand the case for resentencing based on a new factor. Because we conclude that the evidence was sufficient to sustain Evans’s convictions, we do not address his argument. See *Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (when a decision on one issue is dispositive, we need not reach other issues raised).

