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DISTRICT II

August 10, 2022

To:

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Circuit Court Judge
Electronic Notice

Jeffrey W. Jensen
Electronic Notice

Connie Daun
Clerk of Circuit Court
Calumet County Courthouse
Electronic Notice

Loryn Lange Limoges
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1715-CR

State of Wisconsin v. Robert J. Tetter (L.C. #2019CF119)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robert J. Tetter appeals from a judgment entered after a bench trial where the trial court found him guilty of burglary of a dwelling, contrary to WIS. STAT. § 943.10(1m)(a) (2019-20),¹ and one count of misdemeanor theft as party to a crime, contrary to WIS. STAT. §§ 943.20(1)(a) and 939.05.² Tetter claims the evidence was insufficient to show he was the person who committed these crimes. Based upon our review of the briefs and record, we conclude at

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² The trial court found Tetter not guilty of a second charge of misdemeanor theft.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

John and Nancy Rice³ were out of town from December 21, 2018 through December 26, 2018. When John returned to their Appleton home on December 26th, he found the door inside the garage leading into their house “wide open” and their sliding patio door unlocked. John called the police, who arrived and cleared the residence. Nancy was “positive” that she had closed the garage door and locked the sliding patio door prior to leaving. John and Nancy discovered that property from their home was missing, including two televisions, two laptop computers, a piggy bank containing about \$200 in coins, an autographed football, and a Bluetooth speaker.

On December 27th, John saw what he believed to be one of their missing televisions posted for sale on Facebook Marketplace by Emanuel Jenkins.⁴ Appleton Police Sergeant Carrie Peters contacted Jenkins, who said he bought it from Jabez Wallace. In April 2019, police arrested Wallace, who had outstanding warrants on other matters, and questioned him about the stolen television. Appleton Police Sergeant Chue Lee Thao interviewed Wallace at the police station after reading him his *Miranda*⁵ rights.

³ We are using pseudonyms for the victims pursuant to the policy underlying WIS. STAT. RULE 809.86.

⁴ Facebook Marketplace “is an e-commerce platform that connects sellers and buyers[.]” *See* FACEBOOK MARKETPLACE, <https://www.facebook.com/marketplace/learn-more/> (last visited July 26, 2022).

⁵ *Miranda v. Arizona*, 384 U.S. 436 (1966).

Wallace told Sergeant Thao that Robert Tetter (his mother's boyfriend) asked him to find a buyer for two televisions. Thao asked Wallace to call Tetter using a one-person consent recorded call. Wallace obtained Tetter's phone number from Wallace's brother, Kareem. When Wallace called that number, a man Wallace identified as Rob Tetter answered.⁶ During that conversation, Tetter admitted he committed the burglary and that he had stolen the televisions, a "big ass bag of change[.]" and laptops because he "needed to make [a] quick dollar." Tetter told Wallace that he sold one of the televisions to "Big Homie"—the nickname for Jenkins—and then went to "the Garden, in Chicago" because he "[c]ould not deal with that shit and left. Your mom is too much." Tetter then said he was going to call Wallace back from a different number, and he did so a short time later while Thao was still interviewing Wallace. Tetter's incoming phone number was (920) 485-1505. During this second recorded phone call, Tetter told Wallace he "got a whole bunch of shit from ... [expletive] Appleton[.]" "took the van out there[.]" mentioned that Wallace's brother helped Tetter "with the brake[s] that night when I helped your momma move[.]" and expressed regret that Wallace got caught up with this since he "had nothing to do with it." Tetter again confirmed that he "broke in" and took a "football, a helmet, two TVs, ... a laptop," and that he left the football at Wallace's brother's garage.

After Wallace provided Tetter's name and physical description, Sergeant Thao located and printed Tetter's driver's license photo and Facebook account photo and asked Wallace if this was the Tetter he was talking about. Wallace confirmed that it was. Thao also asked Wallace if

⁶ The phone number Wallace called was (920) 415-1061. The number Tetter called Wallace back on was (920) 485-1505. Tetter argues that because the trial transcript does not list the area code for either number this affects identification. We disagree. Exhibit 5, which is the audio recording containing both conversations, references the area code. Exhibit 5 was admitted into evidence.

Tetter had any siblings, and Wallace confirmed Tetter had a sister named Mona. Later, when Sergeant Thao questioned Tetter, Tetter confirmed that 415-1061 was his old phone number and that 485-1505 was his “government-issued phone number.” Police recovered the football from Wallace’s brother’s garage and the television from Jenkins and matched the serial number to confirm it was one of the sets taken from the Rices’ Appleton home.

The State charged Tetter with burglary and theft, he pled not guilty, and the case went to a bench trial. At the conclusion of the trial, the trial court found Tetter guilty beyond a reasonable doubt on the burglary and theft. Tetter appeals.

Tetter claims the evidence was insufficient to identify him as the person who committed the burglary and theft. In reviewing whether the evidence is sufficient to support a verdict, we must view the evidence “most favorably to the state and the conviction” and will uphold the verdict unless it “is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). The standard “is the same whether the evidence ... is direct or circumstantial.” *Id.* at 503. Where there are “conflicts in the testimony,” “[i]t is the [factfinder’s] function ... to weigh the evidence, and to draw reasonable inferences” to resolve such conflicts. *Id.* at 506.

The evidence in the record is more than sufficient to support the trial court’s verdict finding Tetter committed the burglary and theft. Sergeant Thao’s testimony recounting his conversation with Wallace and the recorded phone calls with Tetter, together with Thao’s testimony that Wallace identified Tetter from his driver’s license photo and Facebook photo, support the trial court’s verdict. The trial court, acting as the factfinder, rejected the defense’s

conflicting testimony because it found that testimony was not credible. The trial court heard Tetter's testimony denying that he committed the charged crimes, and it heard Wallace's trial testimony that Tetter was not the person on the recorded phone calls. Wallace claimed the person was a distant acquaintance with the same name but spelled *Tedder*. The trial court, however, weighed the defense witnesses against the testimony of Sergeant Thao, Jenkins, the recorded phone calls, and other evidence corroborating that Tetter committed these crimes. This included Thao tracking down and interviewing a "Robert Tedder," who was clearly not the perpetrator. The trial court found Wallace's trial testimony to be "totally unbelievable" and described Wallace's trial testimony as "some of the most far-fetched, fanciful, and fabricated testimony that [it] heard in more than twenty years[.]"

"[T]he trier of fact is the sole arbiter of the credibility of witnesses and alone is charged with the duty of weighing the evidence." *State v. Below*, 2011 WI App 64, ¶4, 333 Wis. 2d 690, 799 N.W.2d 95. We will not substitute our judgment for the trial court's unless the evidence it relied on was "inherently or patently incredible—that kind of evidence [that] 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).

Our review of the record shows that the trial court's credibility determinations were not incredible. It properly weighed the evidence, drew reasonable inferences, and resolved conflicts in the testimony based on the evidence presented. We have listened to the recorded phone conversations that were admitted into evidence and agree with the trial court's assessment. The person Wallace spoke to both times knew Wallace and referenced his mother. The tone and content of the conversations established a familiarity and a close relationship between Wallace and the individual with whom he was speaking. The first phone number used to speak with

Tetter was obtained from Wallace's brother, and Tetter himself confirmed to Sergeant Thao that the second number was Tetter's phone number. Further, Wallace identified Tetter's driver's license photo and his Facebook photo, and those photos matched Tetter. Thao confirmed that Tetter was the person in the photos. Tetter confirmed he had a sister named Mona. The trial court also heard Tetter's voice in court during his testimony and was in the best position to compare it to the recorded phone conversations. There is nothing to suggest the trial court erred in making its credibility determination.

Sergeant Thao's testimony, supported by the recorded phone calls where Tetter admitted to committing the burglary and theft, is more than sufficient for us to conclude that the factfinder, "acting reasonably" here, could have found Tetter guilty beyond a reasonable doubt. *See Poellinger*, 153 Wis. 2d at 507.

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals