

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 13, 2011

A. John Voelker
Acting 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. 2010AP2541-CR

Cir. Ct. No. 2008CF4093

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICCO J. CRAIG,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Ricco J. Craig appeals from a judgment, entered after a bench trial, convicting him of armed robbery with use of force as a party to a crime. The sole issue he presents on appeal is whether the evidence at trial was sufficient to sustain the conviction. We affirm.

BACKGROUND

¶2 We take the facts from the testimony at trial and from the findings of fact made by the circuit court when considering its verdict. The State's first witness, Harry Henke, testified that his date of birth was August 24, 1925. On August 8, 2008, he stopped his Subaru in front of his home on North 80th Street in Milwaukee, Wisconsin. A small red car pulled up behind his. A clean-shaven, young African-American male of average height with close-cropped hair approached Henke. The young man said that he was having car trouble, and the two men discussed the location of an automotive repair shop in the area. When Henke turned away, the young man said "give me your keys," then grabbed Henke and pulled him to the ground. Henke saw that the young man was holding a dark black revolver. The assailant took Henke's keys and drove away in Henke's Subaru while someone else drove the red car from the scene. The police found Henke's Subaru the next day. Henke viewed a photographic lineup, but he was unable to identify the person who robbed him.

¶3 Officer Gary Inman testified that on August 10, 2008, he was patrolling with a partner in a squad car. He saw a maroon Pontiac Bonneville and determined that it had license plates corresponding to a car reported stolen in an armed robbery. As the officers approached the car, it sped away. After a chase through city streets, the officers stopped the car and determined that Craig was the driver. When Inman searched the car, he found a BB gun that he testified "looks like an authentic semiautomatic handgun." The police arrested Craig.

¶4 Craig gave several custodial statements, and the police made an audio recording of each statement. The State played excerpts from Craig's statements during its case-in-chief. The circuit court summarized Craig's

admissions when it denied Craig's motion to dismiss at the close of the State's case: "Craig admitted to a detective that he took keys from an old man. They were keys to [the old man's] Subaru.... [Craig] drove off in the vehicle. That was a statement he made on August 11th." Craig then testified on his own behalf. He acknowledged giving a statement to police "about robbing the old man," but he claimed that everything he said in his August 11, 2008 statement was a lie offered in the hope of receiving consideration from the police.

¶5 After the parties gave closing arguments, the circuit court found that an assailant robbed Henke at gun point and took his car keys and his Subaru. The circuit court also found that Henke's description of the robber "is consistent with [Craig's] appearance in court." Before reaching a verdict, however, the circuit court voiced concern about whether Craig's admission that he stole a Subaru from an elderly man constituted evidence that Craig stole Henke's Subaru on August 8, 2008. The circuit court asked the State to replay portions of Craig's August 11, 2008 statement. The circuit court then found: "within just a couple days of the armed robbery of Mr. Henke ... the defendant acknowledged that he had been on N. 80th Street, took the keys from an older white gentleman and drove off in a Subaru after having pulled up behind that [Subaru] in another car, that being a Bonneville." The circuit court also found that two days after Henke was robbed, the police stopped Craig while he was driving a Bonneville "and lo and behold there's a gun between the console and the driver's seat." The circuit court found Craig guilty of committing the armed robbery. He appeals.

DISCUSSION

¶6 Craig argues that the evidence was insufficient to prove his guilt because the circuit court reached its verdict in substantial reliance on one of his recorded statements, “some of which was so difficult to understand that the State had to play it numerous times.” We observe that the court reporter did not transcribe the statement when it was played in the courtroom. Instead, the circuit court accepted a transcript of the statement prepared by a member of the prosecutor’s staff. Neither the audio recording nor the transcript offered by the prosecutor is in the record on appeal. “It is the appellant’s responsibility to ensure completion of the appellate record and when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the [circuit] court’s ruling.” *State v. Bush*, 2005 WI 103, ¶5 n.2, 283 Wis. 2d 90, 699 N.W.2d 80 (citation omitted). This general rule is fully applicable where, as here, the appellant challenges the sufficiency of the evidence. *See State v. Huff*, 2009 WI App 92, ¶17, 319 Wis. 2d 258, 769 N.W.2d 154. We thus assume that Craig’s admissions on August 11, 2008, are sufficient to support the guilty verdict in this case.

¶7 Moreover, the record before us reflects that the State presented ample evidence to support the verdict. Before the circuit court could find Craig guilty of armed robbery with use of force as a party to a crime, the State was required to prove that, either directly or by aiding and abetting someone else, Craig took and carried away property from another person, that the other person owned the property, that Craig acted with intent to steal, and that he acted forcibly while using or threatening to use a dangerous weapon. *See WIS. STAT.* §§ 943.32(2) (2007-08); 939.05 (2007-08); *see also* WIS JI—CRIMINAL 1480;

WIS JI—CRIMINAL 400. We review the sufficiency of evidence to support a conviction using a highly deferential standard:

in reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the [S]tate and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis.2d 493, 507, 451 N.W.2d 752 (1990) (citations omitted). We apply the same standard whether the evidence is direct or circumstantial. *Id.*

¶8 In this case, Craig does not suggest that the circuit court improperly credited Henke’s testimony that, on August 8, 2008, someone robbed Henke at gun point on North 80th Street and took his car keys and Subaru. Craig does not deny his admissions to police on August 11, 2008, that he was on North 80th Street when he approached an “old man,” that he took the old man’s car keys and then drove off in the old man’s Subaru. Further, Craig expressly acknowledges that a defendant’s admissions are ordinarily strong evidence of guilt. Nonetheless, he asserts that in this case his admissions should be discounted. In his view, he negated the strength of his admissions by testifying that they were untrue and were made only because he expected to receive “credit” from the officers in exchange for a confession.

¶9 Craig’s effort to undermine his admissions was not successful. The circuit court rejected Craig’s trial testimony, stating: “basically, I don’t believe

anything that the defendant testified about. The testimony, it's pure poppycock." We must defer to the circuit court's credibility assessment. "When the circuit court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness's testimony." *State v. Peppertree Resort Villas, Inc*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. Accordingly, Craig's explanation for his custodial admissions did not discredit them. Those admissions, coupled with the remaining evidence, constitute abundant support for the guilty verdict in this case. We affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

