

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 8, 2008

David R. Schanker
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. 2007AP1415-CR

Cir. Ct. No. 2005CF6884

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DEMETRIUS D. ANDERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 PER CURIAM. A jury found Demetrius D. Anderson guilty of having been a felon in possession of a firearm, a violation of WIS. STAT.

§ 941.29(2)(a) (2003-04)¹ and carrying a concealed weapon, a violation of § 941.23 (2003-04). Anderson contends on appeal that there was insufficient evidence to support the jury verdicts. We disagree and affirm the judgment of conviction.

¶2 Two Milwaukee police officers were on patrol when they heard three or four gunshots. They drove to a liquor store where they believed the shots had come from, and they saw two males running down the street. According to police testimony, the night was cold and no other people were on the street. Officer Patrick Elm testified that he and his partner drove toward the two males to investigate whether they might have been involved in the shooting or whether they might have witnessed it. They stopped the two males and approached them to investigate.

¶3 Officer Elm testified that, when he and his partner were about ten feet from the two, he saw the male subsequently identified as Anderson “pull his right hand out of [his] coat pocket and a black object fall” to the ground. He testified that the ground was covered with about three inches of fresh snow, and that he determined that the object Anderson dropped was a gun. Two employees of the nearby liquor store testified that they had seen two people, one taller than the other, shooting a gun. Anderson was taller than the other person with him.

¶4 On appeal, Anderson argues that the evidence adduced at trial was circumstantial and insufficient to sustain the convictions. More specifically, he

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

argues that because the evidence was “entirely circumstantial,” the State’s burden was to demonstrate that “[a]ll the facts necessary to warrant a conviction ... [were] consistent with each other and with the main fact sought to be proved and the circumstances taken together” were sufficiently conclusive to lead “on the whole to a satisfactory conclusion and produc[e] in effect a reasonable and moral certainty that the accused and no other person committed the offense charged.” *State v. Johnson*, 11 Wis. 2d 130, 136, 104 N.W.2d 379 (1960). He argues that because neither the officer who arrested him nor the two liquor-store witnesses could positively identify him as the shooter, and because the officer could not positively identify the object he had in his pocket or threw to the ground as a gun, the evidence was insufficient to convict and the jury’s verdict was therefore flawed. We disagree.

¶5 The standard of review is well-settled. A reviewing court must accept the findings of the trier of fact unless the evidence, viewed most favorably to the State and the conviction, is so lacking in probative value and force, that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). This standard arises from the fact that “the jury has the great advantage of being present at the trial and is thus in the best position to weigh and sift conflicting testimony and attribute weight to those nonverbal attributes of the witnesses which are often persuasive indicia of guilt or innocence.” *State v. Allbaugh*, 148 Wis. 2d 807, 809, 436 N.W.2d 898 (Ct. App. 1989) (citation omitted) (internal quotation marks omitted).

¶6 There was ample evidence to support the jury’s verdict. Even though much of the evidence was “circumstantial,” the “circumstances taken together” were sufficiently conclusive to result in “a reasonable and moral certainty” that Anderson, and no other, committed the crimes charged. *See*

Johnson, 11 Wis. 2d at 136-37. The jury was free to credit the police officer's testimony that he heard gunshots, that he and his partner had gone to investigate, and that they saw two males running down the street, whom they stopped to question. The officer testified that he saw Anderson pull "a black object" out of his pocket and drop it on the ground into three inches of fresh snow. Similarly, the jury was free to credit the officer's testimony that no black object other than the handgun was on the ground. The jury also heard testimony from two employees of a liquor store that they had seen the taller of two males shooting a gun. Finally, the jury was free to consider police testimony that except for the two males, the streets were deserted that night. We are satisfied that this evidence, viewed most favorably to the State, is sufficient to support the jury verdicts.

By the Court.—Judgment affirmed.

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

