

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 9, 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. 2007AP2555-CR

Cir. Ct. No. 2006CF3

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SERGEY VLADIMIR ANDREYEV,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County:
JAMES EVENSON, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Sergey Vladimir Andreyev appeals from a judgment convicting him of three counts of second-degree sexual assault of a child and one count of obstructing an officer. He argues that there was insufficient

evidence to prove the sexual assault charges and that the circuit court should have suppressed incriminating statements he made. We affirm.

¶2 Andreyev first argues that there was insufficient evidence to prove the sexual assault charges beyond a reasonable doubt because the State failed to prove that he had sexual intercourse with the victim. “‘Sexual intercourse’ means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal opening....” See WIS. STAT. § 948.01(6) (2005-06).¹ We will not substitute our “judgment for that 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 trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Hayes*, 2004 WI 80, ¶56, 273 Wis. 2d 1, 681 N.W.2d 203 (citation omitted).

¶3 Andreyev contends that the State failed to prove that sexual intercourse occurred because there was insufficient evidence to show that he had penetrated the victim. He contends that the State failed to prove that there had been an “intrusion, however slight, by [his] penis into [the victim’s] genital [opening].” He bases his argument on the fact that the victim had said that he had trouble maintaining an erection. We reject this argument. The victim testified that she had sex with Andreyev, which she defined as “[h]is penis in my vagina.” She also testified that “[h]e could have an erection long enough to have sex,” but that he would “stop because he’d lose it.” Regardless of whether Andreyev had

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

trouble continuing the sexual act once it had commenced, he is guilty of the crime. The victim's testimony is sufficient to support the conviction.

¶4 Andreyev next argues that there was insufficient evidence to show that he committed three different counts of sexual assault. He contends the victim did not testify to the exact number of times she had sexual intercourse with Andreyev. We disagree. The victim unequivocally testified that she had sexual intercourse with Andreyev “[t]hree or four times” during the relevant time period. This testimony constitutes sufficient evidence to support the conviction.

¶5 Finally, Andreyev argues that statements he made to Detective Mark Hahn should have been suppressed because they were obtained in violation of his right to counsel. After a defendant asserts the right to counsel, the government is prohibited “from initiating any contact or interrogation concerning the charged crime, and any subsequent waivers by a defendant during police-initiated contact or interrogation are deemed invalid.” *State v. Hornung*, 229 Wis. 2d 469, 476, 600 N.W.2d 264 (Ct. App. 1999). Andreyev argues that after he asserted his right to counsel, Detective Hahn improperly took a statement from him about the crime. Again, we reject this argument. Detective Hahn contacted Andreyev at the jail at the request of the Latvian embassy to inform Andreyev that he had a right to phone the Latvian embassy for assistance. At that point, Andreyev did not make the incriminating statements. Later, however, Andreyev initiated contact with Hahn by asking Hahn to return to his cell, at which point Andreyev made the statements. Detective Hahn testified that when Andreyev asked him to come back to the cell to answer more questions but then began to volunteer information about

the crime, Hahn read Andreyev his *Miranda*² rights again before continuing. Because Andreyev initiated the contact with Hahn, there was no violation of Andreyev's right to counsel.

By the Court.—Judgment affirmed.

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

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

