

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 13, 2009**

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. 2008AP1290-CR**

**Cir. Ct. No. 2005CF187**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CEDRIC D. STEVENSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Kenosha County: S. MICHAEL WILK, Judge. *Affirmed.*

Before Anderson, P.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. Cedric Stevenson appeals from a judgment convicting him of kidnapping, burglary while armed, and armed robbery, all as party to the crime, and from the order denying his postconviction motion to withdraw his no contest plea to kidnapping. Stevenson did not establish the

existence of a manifest injustice warranting plea withdrawal, and the circuit court properly exercised its discretion when it denied his motion. We affirm.

¶2 Stevenson pled no contest to being party to the crime of kidnapping Nora Nieves during a home invasion. Kidnapping, WIS. STAT. § 940.31(1)(b) (2005-06), requires seizure or confinement. WIS JI—CRIMINAL 1281 (2006) states that a person is confined if that the person is deprived of freedom of movement or compelled to remain where the person does not wish to remain.

¶3 The criminal complaint, which formed the factual basis for Stevenson's no contest pleas, sets forth Nieves' statement to police. Nieves worked at a check cashing establishment. In the early morning hours of February 20, 2005, armed, masked and gloved men invaded her home, burst into her bedroom, tied up her family, and told her to get dressed for a trip to the check cashing establishment to open the safe. Nieves was taken to another room in the house to get dressed. As she was getting dressed, she heard one of the men yell "po-po," a slang term for police. The man who was confining her told her to get down on the floor, she heard the police outside, and the man fled.

¶4 The criminal complaint further alleged that a police officer happened upon the invaded home after following suspicious footprints on fresh snow to Nieves' residence. The officer observed signs of a forcible entry and freed Nieves and the other residents. The officer then returned outside to follow the footprints from the broken back door through backyards where they joined other footprints. The footprints ended at a garage in which officers found Stevenson and his co-actors, dressed in dark clothing, along with personal property taken from Nieves' home. Behind another nearby garage, officers found a firearm and a dark knit cap and gloves, the intruders' apparel as described by the victims.

¶5 The complaint also contained statements from Stevenson’s co-actors that they had intended to enter a house to commit a robbery.

¶6 Stevenson entered no contest pleas to kidnapping and two other charges. At the plea hearing, Stevenson agreed that the complaint stated “an ample factual basis” for the pleas. However, postconviction, Stevenson moved to withdraw his no contest plea to kidnapping because the complaint did not allege a sufficient factual basis for the charge (i.e., that Nieves was seized or confined) or that he participated in the kidnapping.<sup>1</sup> The circuit court concluded that the complaint provided a sufficient factual basis for the kidnapping plea and denied Stevenson’s motion to withdraw that plea.

¶7 To withdraw a plea after sentencing, a defendant must establish a manifest injustice necessitating withdrawal of the plea. *State v. Booth*, 142 Wis. 2d 232, 235, 418 N.W.2d 20 (Ct. App. 1987). The defendant bears the burden to show a manifest injustice. *Id.* at 237. Whether to permit plea withdrawal is within the circuit court’s discretion. *Id.*

¶8 A plea has a factual basis “if an inculpatory inference can be drawn from the complaint ... even though it may conflict with an exculpatory inference elsewhere in the record and the defendant later maintains that the exculpatory inference is the correct one.” *State v. Black*, 2001 WI 31, ¶16, 242 Wis. 2d 126, 624 N.W.2d 363.

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<sup>1</sup> Stevenson admitted to the presentence investigation report author that he committed a burglary, but he denied any knowledge about what happened to Nieves in the house.

¶9 In denying Stevenson’s plea withdrawal motion, the circuit court cited the following facts in the complaint. Nieves’ home was invaded by armed men, Nieves was taken to another room and told to get dressed, she was ordered to the floor when police appeared outside the home, the intruder left Nieves and closed the door to the room. The court found that these allegations described a victim who was deprived of freedom of movement and compelled to remain in a room where she did not want to remain. We agree with the circuit court that these facts are sufficient to constitute kidnapping.

¶10 As for whether the complaint contained a sufficient factual basis to inculcate Stevenson, the circuit court found that the complaint alleged that Stevenson was found with other co-actors who satisfied the victims’ description at the end of a footprint trail from Nieves’ house. One of the co-actors confessed to the robbery plan. Another co-actor found walking in the neighborhood confessed to being part of the plan. The circuit court concluded that the complaint permitted an inculpatory inference that Stevenson committed the kidnapping as party to the crime. We agree. Stevenson’s involvement in the kidnapping as party to the crime was a reasonable inference from the complaint.

¶11 The circuit court properly exercised its discretion in denying Stevenson’s motion to withdraw his no contest plea to kidnapping because Stevenson did not establish a manifest injustice warranting such relief.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

