

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 30, 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. 2008AP1701-CR

Cir. Ct. No. 2006CF1100

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL A. FERGUSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
PETER NAZE, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Michael Ferguson appeals his judgment of conviction. Ferguson was found guilty upon a jury verdict of stalking, attempted

first-degree intentional homicide and obstructing an officer.¹ Ferguson argues on appeal there was insufficient evidence to convict him of attempted first-degree intentional homicide.² We reject Ferguson's arguments and affirm the conviction.

Factual Background

¶2 In February 2006, Amy Johns moved out of the residence she shared with Ferguson for approximately a year. Amy and Ferguson had an “on again, off again” relationship that produced a son, and Amy also had a daughter from another relationship. With her father's help, Amy moved into an apartment in Green Bay with her children. Between March 1 and March 15, 2006, Ferguson called her incessantly. After Amy changed her telephone number, Ferguson began calling her father with threatening and abusive messages.

¶3 During the early morning hours of March 21, 2006, Amy was awakened by loud noises and pounding on the door. She attempted to turn on the lights and look at her alarm clock but realized the power was off to her apartment. She tried to use her telephone, but discovered it was also out of service. Amy located her cellular phone and called 911, and police were dispatched. When the officers arrived, they pried the outside lock of the multi-family apartment complex and attempted to determine where Amy's apartment was located in the building.

¹ Ferguson also was convicted of escape to which he pled no contest.

² Ferguson's notice of appeal states he is appealing from “the whole of the judgment.” However, his briefs only challenge the sufficiency of the evidence to convict him of attempted first-degree intentional homicide. We therefore only address that issue. See *Reiman Assocs., Inc. v. R/A Advert., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981).

¶4 The officers realized the apartment was on the second floor and one officer went up the north stairs and another ascended the south stairs. The officers found Ferguson at the top of the steps ten feet or less from Amy's apartment door holding a knife over his head. With their service weapons drawn, the officers repeatedly ordered Ferguson to drop the knife, but instead he opened his jacket and stabbed himself twice.

¶5 After stabbing himself, Ferguson continued to disobey police orders to drop the knife and get on the ground. One officer attempted without success to taser him. The officers struck Ferguson twice with batons in order to restrain him. In Ferguson's rear pants pocket they found a letter, stating, "dear Amy, you got yours"

¶6 Prior to these events, Ferguson had left numerous messages on Mr. Paul Johns' telephone answering machine threatening to kill him and Amy. The telephone messages stated, among other things "Prepare your daughter's funeral," "you will be buying her casket," "You can't protect her," "Forewarned she's dead and your house will burn," and "You're too late."

Discussion

¶7 Ferguson argues the State failed to offer sufficient evidence to prove beyond a reasonable doubt that he intended to kill Amy. Ferguson asserts no homicidal inferences can be drawn because when confronted by police he was not at Amy's apartment door, attempting to enter her door, or threatening Amy. Ferguson also contends the messages left on Mr. Johns' answering machine are not indicative of intent to commit first-degree intentional homicide because none of the statements read alone suggest intent to kill. According to Ferguson, the

messages “are indicative of an intoxicated state and of a frustration over losing property that he believed belonged to him.”

¶8 Ferguson also argues the calls “were an attempt to get Mr. Johns to phone Ferguson and to get Mr. Johns to make his daughter, Amy Johns, phone him. It was all about Ferguson wanting a phone call from Ms. Johns.” He further claims the “switching off of the power, the cutting of the telephone lines and the banging on the door, in light of all of Ferguson’s other acts, could only have meant that he was trying to frighten Ms. Johns and get her attention so that she would talk to him.” Ferguson insists the messages about buying a coffin, preparing for her funeral, and burning down Mr. Johns’ house “were taken out of context by the prosecution.”

¶9 We may overturn a verdict on grounds of insufficiency of evidence only if the jury could not possibly have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). We review the evidence in the light most favorable to the verdict. The credibility of witnesses and the weight of the evidence are for the jury. *Id.* at 503-04. It is also proper for a jury to draw logical inferences from the evidence, “connecting its dots into a coherent pattern.” *See State v. Sarnowski*, 2005 WI App 48, ¶12, 280 Wis. 2d 243, 694 N.W.2d 498.

¶10 Here, Ferguson’s course of conduct was more than sufficient to allow the jury to infer the necessary elements of attempted first-degree intentional homicide. The overall theme of the evidence was Ferguson’s increasing agitation and violence after Amy moved out of their residence. The jury heard evidence of Ferguson’s escalating threats to Amy spanning a number of weeks. On January 30, 2006, Ferguson threatened to kill their son. By late February, Amy

had obtained a new apartment and Ferguson accosted Amy's father in the parking lot and threatened to kill him, Amy and his granddaughter.³

¶11 Ferguson's threatening behavior escalated to the point of 609 phone calls to Amy's cell phone between March 1 and March 15, 2006. On March 9, Ferguson called 193 times. The evidence also showed that after March 16, when Amy changed her cell phone number and obtained a land line, Ferguson started making threatening or harassing telephone calls to Mr. Johns. The messages contained threats to kill Amy and her father and to "burn the house and blow up the car." Another message said, "I know where you are now, you can't protect her now, and she's done for."⁴

¶12 On March 18, 2006, Ferguson accosted Amy in a Wal-Mart store on the west side of Green Bay, but he fled before the police arrived. On March 21, Ferguson was hiding in Amy's basement and made twenty-one calls to Mr. Johns between 4:16 and 4:59 a.m., threatening to kill Mr. Johns, Amy and himself. The final call, before Ferguson went up to Amy's apartment door, stated that it was "too late" for her father to save her life. Before proceeding to Amy's apartment door, Ferguson slashed with his knife some of her property stored in the basement, turned off her electricity and cut her telephone line. The police found Ferguson a short distance from Amy's door wielding a knife. He refused repeated orders to drop the knife despite the officers having drawn their weapons and, even after

³ Mr. Johns was staying with Amy for a time after she moved into the apartment. Ferguson had apparently followed Mr. Johns to the apartment after Mr. Johns dropped his granddaughter off at school and Ferguson was in a position to see the apartment number on Amy's designated parking spot.

⁴ A number of Ferguson's telephone messages were played to the jury. The messages were also transcribed and the transcripts were received into evidence.

stabbing himself, appeared to be in “attack posture.” When he was arrested, a note was found in Ferguson’s pocket that said, “dear Amy, you got yours”⁵

¶13 Ferguson’s arguments merely offer alternative inferences that can be drawn from the evidence, contrary to our standard of review. In the light most favorable to the verdict, it is disingenuous to insist the evidence could only be viewed to mean that Ferguson was trying to frighten Amy and get her attention so that she would talk to him. Indeed, the fact that he cut her phone line critically undercuts his argument that he only wanted to speak to her. The fact that Ferguson cut the power to her apartment further supports the prosecution theory that Ferguson wanted to terrorize and isolate Amy before his final attack. By twice stabbing himself with a ten-inch filet knife, Ferguson also evidenced the extreme violence of which he was capable.

¶14 We need not concern ourselves with evidence which might suggest an alternative inference or theory of defense. We need only decide whether the theory accepted by the jury was supported by sufficient evidence to sustain the verdict rendered. *Poellinger*, 153 Wis. 2d at 507-08. It was, and the conviction is affirmed.

⁵ Ferguson later claimed to police that he and Amy had been smoking crack cocaine in her apartment and then went downstairs to her basement storage unit because she wanted to show him some of his property. While down there, they smoked some more crack cocaine, drank alcohol and “smoked Newport cigarettes.” They returned to Amy’s apartment where Amy wanted to smoke some more crack cocaine. When told that he was not going to provide more crack cocaine because he needed to retain some to sell, she got upset and stabbed him in the chest. Ferguson stated Amy then sent him back to the storage unit to sleep but he could not get in because it was locked so he went back upstairs and was pounding on her door to get back in when the police arrived. At that point, Ferguson claimed he stabbed himself again because he did not want to be arrested.

By the Court.—Judgment affirmed.

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

