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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

APPEAL NO. 2020AP000208

COUNTY OF WALWORTH,

Plaintiff-Respondent,

v.

BOZENA TWAROWSKI,

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON APPEAL FROM THE JUDGMENT OF
THE HONORABLE KRISTINE E. DRETTWAN, CIRCUIT COURT JUDGE
CIRCUIT COURT FOR WALWORTH COUNTY

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STATEMENT OF THE ISSUES

WAS THE EVIDENCE PRODUCED AT THE COURT TRIAL SUFFICIENT TO SUPPORT A FINDING OF GUILT OF DISORDERLY CONDUCT?

Trial court answer: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Neither publication of this court's opinion nor oral argument are necessary in this case. The issues presented are adequately addressed in the brief and under the rules of appellant procedure, publication of this decision is not appropriate because it is a one judge appeal. See Sec. 809.23(1)(b)(4), Wis. Court Rules and Procedures, 2017-18.

STATEMENT OF THE FACTS

The defendant-appellant, Bozena Twarowski, hereinafter Twarowski, was given a citation for disorderly conduct, which occurred on August 5, 2019 (R1, R9:3).

The court trial was scheduled for December 12, 2019 (R9). During the trial, three witnesses were called to testify: the county called Robert Peterson and Deputy Jocelyn Strand, and Twarowski took the stand on her own behalf.

Robert Peterson, owner of Geneva's Paw Retreat located in Walworth County, Wisconsin testified that on August 5, 2019 Twarowski came to his business to pick up a dog that belonged to someone else (R9:9). Peterson explained that

Twarowski and her brother had originally dropped the dog off at his business approximately two weeks earlier and told Peterson that the dog belonged to her brother (R9:5-6). Earlier in the day on August 5th, however, Peterson stated different people came to pick up the dog with paperwork showing that the dog belonged to them (R9:5). Although these people had the proper paperwork to collect the dog, they refused to pay the boarding fees that had accumulated, claiming that Twarowski had to pay the bill (R9:5-7, 9-10). Because the owners of the dog refused to pay the boarding fees, Peterson refused to release the dog to them (R9:9-10).

After the owners of the dog left his business, Peterson stated Twarowski came into his business later in the day and demanded that Peterson release the dog to her; however, Twarowski did not want to pay the bill (R9:7-8, 9-10).¹ Again, Peterson refused to release the dog (R9:8). While speaking with Twarowski, Peterson stated that Twarowski started getting hostile (R9:7). At that time, Peterson testified that he told Twarowski, "Please, ma'am, you need to calm down or you need to leave." (R9:7). Peterson stated that Twarowski did not want to pay or leave

¹ While at the boarding facility, the dog bit Mr. Peterson. After contacting Twarowski about the bite, Mr. Peterson agreed to keep the dog at the facility for a higher boarding fee (R9:5, 8, 16). According to Mr. Peterson, Twarowski agreed to the higher fee.

and told Peterson to call the police (R9:10). Peterson then told Twarowski that if she did not leave he was calling the police (R9:10).

While speaking with Twarowski, Peterson stated that Twarowski was arguing, would not listen to him and was very hostile (R9:10). Peterson further testified that he asked Twarowski several times to leave his business, but Twarowski refused (R9:11). As a result of Twarowski's behavior Peterson stated he called the police and Twarowski went out and sat in her car for a long time (R9:10-11). Prior to police arrival, Twarowski left the business (R9:11).

Walworth County Sheriff's Deputy Jocelyn Strand testified that on August 5, 2019 she was dispatched to Geneva's Paw Retreat located in the Town of LaGrange, Walworth County, Wisconsin (R9:18-19). Upon arrival, Deputy Strand spoke with Robert Peterson. Deputy Strand, who had just heard Mr. Peterson testify, stated that Peterson's testimony was consistent with the information he gave her on August 5, 2019 (R9:19).

Deputy Strand testified she made phone contact with one of the dog's owners, Inga. Inga explained she and Richard had made arrangements for Twarowski to watch their dog while they were out of town for two weeks (R9:22, 23).

Inga stated it was their understanding that Twarowski was going to be in possession of their dog for that period of time (R9:22). Inga stated that she and Richard were unaware that their dog was at a kennel until their return (R9:22-23).

After issuing Twarowski a disorderly conduct citation, Deputy Strand subsequently met with Twarowski in the lobby of the Walworth County Sheriff's Office (R9:20). Deputy Strand explained to Twarowski the reasons for the citation (R9:20). Mr. Peterson had described Twarowski's conduct as being mean and aggressive, and that Twarowski was yelling at him to the point where he felt that he needed to call the police (R9:20-21). Deputy Strand testified that as she tried to explain the citation to Twarowski, Twarowski's behavior was borderline disorderly. Deputy Strand testified that Twarowski was not accepting what Deputy Strand was telling her to the point where Deputy Strand had to remove herself from the conversation (R9:21).

While speaking with Twarowski, Deputy Strand testified that Twarowski did admit that she had been asked to leave Peterson's business (R9:21).

Finally, Twarowski testified on her own behalf. Twarowski testified that she did not behave in the manner described by Mr. Peterson (R9:33). Rather, Twarowski

testified she was "begging" Mr. Peterson to release the dog, and she was not refusing to pay the boarding fee originally agreed upon before the dog bit Mr. Peterson (R9:30-33, 36). Ms. Twarowski admitted that she was told to leave Mr. Peterson's business, but refused to leave because the dog's owner was on his way to the business to try and resolve the situation (R9:32-33, 35-36).

Trial Court's Findings of Fact

After closing the evidence and hearing the parties arguments, the Court found Twarowski guilty of disorderly conduct by clear, satisfactory and convincing evidence (R9:42). In so ruling the Court made a number of findings:

[T]he Court has to make a credibility decision here.

I found Mr. Peterson to be credible. He stated that you had dropped off this dog two weeks prior to August 5th. It ended up that you were not the owner. The dog had bitten him at some point during the boarding process. He had called you, wanted you to come get the dog. You begged him to keep it. He said it would cost then a hundred dollars per day and you would have to come feed it yourself, and that you started coming to feed it yourself.

He said when the owners came to pick it up they were not willing or could not pay the bill so he was not going to release the dog. You then came on August 5th. He testified that you would not pay. You were arguing. You wouldn't listen. You were hostile and he asked you to leave many times and you would not to the point where he felt he had to call the police.

The deputy testified that Mr. Peterson said that you were acting mean, you were aggressive, you were yelling, and he felt it was to the point where he needed to call police. You have said that you did not act it that way, but I find Mr. Peterson to be credible.

I also know that the deputy testified that when she did speak with you at the sheriff's office after you received the citation that you were borderline disorderly with her at the sheriff's office to the point where she had to step back and not speak to you anymore.

So for all of these reasons I think that you did act in a disorderly manner in that you were acting in such a way that it did cause a disturbance to the point where he had to call for police help.

(R9:40-42).

ARGUMENT

I. SUFFICIENT EVIDENCE WAS ADDUCED TO ENABLE THE COURT TO FIND TWAROWSKI GUILTY OF DISORDERLY CONDUCT.

A. Standard of review.

Twarowski was found guilty of an ordinance disorderly conduct after a court trial. The principles governing review of a sufficiency challenge are well settled:

[A]n appellate court may not substitute its 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 [to the required degree of certainty]. 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). These principles apply regardless of the extent to which a conviction rests on circumstantial evidence. See *id.* at 503.

Although the trier of fact must be convinced that the evidence is sufficiently strong to exclude every reasonable hypothesis of the defendant's innocence, this is not the test on appeal. *Id.* As the Wisconsin Supreme Court explains:

In reviewing the sufficiency of circumstantial evidence to support a conviction, an appellate court need not concern itself in any way with evidence which might support other theories of the crime. An appellate court need only decide whether the theory of guilt accepted by the trier of fact is supported by sufficient evidence to sustain the verdict rendered.

Id. at 507-08.

An appellate court will not substitute its judgment for that of the trier of fact unless the fact-finder relied on evidence that was "inherently or patently incredible." *State v. Tarantino*, 157 Wis. 2d 199, 218, 458 N.W.2d 582 (Ct. App. 1990).

The reviewing tribunal does not retry the case on the testimony in the record to determine whether its members are collectively convinced that the defendant committed a

crime. See *Fox v. State*, 60 Wis. 2d 462, 470, 210 N.W.2d 722 (1973). The question is not whether the reviewing court is persuaded of the defendant's guilt, but whether the trier of fact could have reasonably been convinced to the required degree of certainty. *State v. Poellinger*, 153 Wis. 2d 493, 503-04, 451 N.W.2d 752 (1990). The test on appeal is not whether the evidence is sufficient to exclude every reasonable hypothesis of innocence, but whether the evidence, direct or circumstantial or both, which the trier of fact had a right to believe, accept or rely on, is sufficient to support its finding of guilt. *Id.*

It is exclusively the function of the trier of fact to determine the credibility of the witnesses, resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *Poellinger*, 153 Wis.2d at 504, 506.

In performing its function to sort out the conflicting evidence and determine what actually happened, the fact finder is free to determine which testimony of which witnesses it finds credible, regardless of any conflicts within the testimony of an individual witness or between the testimony of several witnesses, *Kohlhoff v. State*, 85 Wis. 2d 148, 154, 270 N.W.2d 63 (1978), or the number of witnesses who testified to a particular fact. *Ruiz v.*

State, 75 Wis. 2d 230, 234, 249 N.W.2d 277 (1977). And it can piece together the testimony of the various witnesses it found credible to construct a chronicle of the circumstances surrounding the crime. *State v. Sarabia*, 118 Wis. 2d 655, 663-64, 348 N.W.2d 527 (1984).

B. In this case, there was sufficient evidence to support the court's finding Twarowski guilty of disorderly conduct.

Twarowski argues that the evidence adduced at trial was not sufficient to support her conviction of disorderly conduct. Twarowski complains that only she and Peterson were present at the time of the crime, and that Peterson's inconsistencies rendered his testimony incredible. However, any alleged inconsistencies and contradictions in Peterson's testimony were for the trier of fact to consider in determining credibility. *Kohlhoff v. State*, 85 Wis.2d 148, 154, 270 N.W.2d 63 (1978). Applying this standard here, no basis exists to conclude that the evidence was insufficient to convict Twarowski of disorderly conduct. The facts as stated in the previous section of this brief clearly supported a finding that Twarowski engaged in disorderly conduct. Although there may have been conflicting evidence, the evidence supporting Twarowski's conviction was not so insufficient in probative value and force that, as a matter of law, no judge could have found guilt.

In short, the trial court heard and was thus able to evaluate the inconsistencies in both Peterson and Twarowski's statements, together with all of the other reasons Twarowski was able to muster why the trial court should disbelieve Peterson's testimony. The trial court comments, however, clearly articulate the reason the court found Peterson's testimony credible. This court may not substitute its determination of the credibility of the witnesses for that of the trial courts. Credibility is solely for the fact finder to determine. See *State v. Johnson*, 184 Wis. 2d 324, 346, 516 N.W.2d 463 (Ct. App. 1994). Thus, viewing the evidence in the light most favorable to the court's finding, this court should conclude that the evidence was sufficient to prove Twarowski's guilt. Since Peterson and Twarowski's credibility was for the trial court to determine, no basis exists for this court to conclude that the evidence was insufficient to convict Twarowski of disorderly conduct.

CONCLUSION

For the above reasons, the county respectfully requests that this court affirm the trial court's finding of guilt.

Dated this ____ day of July, 2020.

Respectfully submitted,

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CERTIFICATION

I certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c).

_____ Monospaced font: 10 characters per inch; double spaces; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides.

The length of the brief is _____ pages.

I also certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated: _____

Signed,

Attorney