COURT OF APPEALS DECISION DATED AND RELEASED

MARCH 18, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2317-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DONALD JOSEPH HALL,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Polk County: JAMES A. WENDLAND, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Donald Joseph Hall, Jr., appeals a judgment convicting him of second-degree reckless endangering safety and criminal damage to property. He argues that the State presented insufficient evidence of criminally reckless conduct or substantial risk of death or great bodily harm to support the endangering safety conviction. We reject this argument and affirm the judgment.

To convict Hall of second-degree reckless endangering safety, the State had to prove beyond a reasonable doubt that Hall endangered the safety of another human being by criminally reckless conduct. *See* WIS J I—CRIMINAL 1347 (1993). "Criminally reckless conduct" exists if Hall created an unreasonable and substantial risk of death or great bodily harm to another and was aware that his conduct created that risk. "Great bodily harm" means serious permanent disfigurement, a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm. ***Id.*** To sustain a conviction for second-degree reckless endangerment, the evidence need only establish that Hall's conduct created an unreasonable and substantial risk of death or serious bodily harm, not that the victim, Bruce Foss, actually sustained any serious harm. *See* ***State v. Johnson***, 184 Wis.2d 324, 347, 516 N.W.2d 463, 471 (Ct. App. 1994).

The State presented sufficient evidence to support the jury's verdict. The test is whether the evidence, viewed most favorably to the State, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *See* ***State v. Poellinger***, 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990). The State presented evidence that Hall drove a car into Foss's front yard, throwing grass and gravel into the air. After the car pulled back onto the pavement and stopped, Foss confronted Hall, putting his hands on the car and leaning through the window. Hall then grabbed Foss's arm and rapidly accelerated passing "extremely close" to another car. Foss was uncertain whether he struck the other car, but its occupants heard a "thud" as Hall's car passed. Foss disengaged himself and rolled face first onto the blacktop and cracked a bone in his wrist. This evidence, if believed by the jury, established that Hall's conduct created an unreasonable and substantial risk of serious bodily harm.

Hall presented evidence that he was acting in self-defense after Foss attacked him. A police officer who encountered Hall later that evening testified that he observed no bruising on Hall's face or other signs that he had recently been in an altercation. The jury, as the ultimate arbiter of the witnesses' credibility, was entitled to reject the testimony presented by Hall and two of his acquaintances that Hall acted in self-defense. *See* ***State v. Webster***, 196 Wis.2d 308, 320, 538 N.W.2d 810, 815 (Ct. App. 1995).

Hall argues that he took "evasive actions" to avoid injuring Foss. The jury could reasonably view driving within inches of another car under these circumstances as Hall's effort to avoid damaging his car, oblivious to the injuries that Foss might incur.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.