COURT OF APPEALS
DECISION
DATED AND FILED

August 15, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP3339 **Cir. Ct. No. 2003CF3794**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CRYSTAL CARREON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed and cause remanded with directions*.

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Crystal Carreon appeals from a judgment entered after a jury found her guilty of one count of first-degree reckless injury, *see* WIS. STAT. § 940.23(1)(a), and two counts of first-degree recklessly endangering safety,

see WIS. STAT. § 941.30(1), all as a party to a crime, *see* WIS. STAT. § 939.05.[1] She claims that the evidence was insufficient to support her first-degree-reckless-injury conviction. We affirm.

I.

¶2 Carreon was charged with being the driver of a car involved in two drive-by shootings on June 25, 2003, in Milwaukee, involving the shootings of Roberto A., Jose G., and Jorge P.-S.[2] Carreon only challenges her conviction for the first-degree reckless injury of Roberto A. Whether there was sufficient evidence to support the jury's verdict turns on an evaluation of the evidence presented at the trial.[3]

¶3 Three days after the shootings, Carreon was arrested and spoke to the police. What she told them was read to the jury. She told the police that a friend asked her to give three men, whom she claimed she did not know, a ride home. Carreon told the police that they had been driving around for a few minutes when they saw a boy riding a bicycle. According to Carreon, one of the men, whom she called "Fatty," told her to slow down and asked the boy if he was a member of the Spanish Cobras. She told the police that the next thing she knew,

[1] Crystal Carreon's judgment of conviction does not show that her crimes were charged with the while-armed penalty enhancer, *see* WIS. STAT. § 939.63, or that one of the charges (count two) was amended from first-degree reckless injury, as a party to a crime, to first-degree recklessly endangering safety, as a party to a crime. The trial court should amend the judgment to reflect the while-armed penalty enhancer and amendment of count two. *See* ***State v. Prihoda***, 2000 WI 123, ¶5, 239 Wis. 2d 244, 247–248, 618 N.W.2d 857, 860.

[2] The victims were under eighteen when they were shot. We thus refer to them by their first name and last initial. *See* WIS. STAT. RULE 809.19(1)(g).

[3] Carreon's first trial ended in a mistrial after the jury was unable to reach a verdict. Accordingly, the evidence set out above is from her second trial.

she heard three loud bangs from the car and the bicycle fell. Carreon claimed that "Fatty" then told her to "'Go. Go. Go.,'" and that if she told anyone about the shooting, he would kill her.

¶4 In her statement to the police, Carreon said that they had been driving around for "a couple of hours" after the shooting when "Fatty" told her to slow down in front of a house with four people outside. According to Carreon, "Fatty" leaned out the car window and yelled "Cobra Killer" at the people. When the people did not respond, "Fatty" told her to drive around the block. Carreon told the police that as she was driving by the house for the second time, she heard four or five shots from the car, so she sped up and drove away. Carreon claimed that she did not know that one of the men had a gun until he shot the boy on the bicycle.

¶5 Roberto A. testified that on June 25th, around 4:30 p.m., he was riding his bicycle when a car suddenly "came by fast." According to Roberto A., a man in the car yelled "some bad words … [l]ike, son of a bitch." Roberto A. testified that the car then drove up next to him and someone in the car made signs at him with his hands. According to Roberto A., someone then shot at him three or four times. Three bullets hit him.

¶6 Jose G. testified that around 6:50 p.m. on June 25th, he was hanging out on the porch of a friend's house when a car drove past. According to Jose G., the second time the car drove past, someone in the car "threw gang signs" for the Latin Kings. Jose G. testified that, after his friend responded with a sign of disrespect, the car came back and someone from the back of the car shot at them. Jose G. and his friend, Jorge P.-S., were shot.

¶7 A Milwaukee police detective testified that he found a spent .22 caliber casing in the back of Carreon's car. According to the detective, the casing matched casings recovered from the scenes of the drive-by shootings. The detective also testified that, before Carreon gave her statement to the police, she claimed that she was not involved in the shootings and that she did not associate with gang members.

¶8 A detective who specialized in street gangs testified about a photograph found in Carreon's car. The photograph showed Carreon and a man, whom the caption to the photograph identified as "'Andre.'" According to the detective, the man in the picture was Andre Przerworski, a ranking member of the Latin Kings street gang.

¶9 The detective also testified about an unmailed letter found in Carreon's car that appeared to be dated the day before the shooting.[4] In the letter, Carreon wrote, among other things: (1) "I did break up with Drey after all"; (2) "I do want to be with him in the future"; (3) "I don't live at my house any more. It got raided"; (4) "[t]hey took all my gang-related shit"; and (5) "[a]ll I be about is the Nina 1-9 … I constantly with them." The detective testified that "Nina" is a Spanish word for little girls, and that the "1-9" refered to the 19th Street Chapter of the Latin Kings, meaning that Carreon was a female member of the 19th Street Latin Kings street gang. According to the detective, Carreon's letter also referred to a police raid of her house, during which the police seized a photograph that depicted Carreon with a gang-related tattoo on her right arm.

[4] The detective testified that the first page of the letter was dated June 24, 2003, but that the last page appeared to be dated June 24, 2002. When asked by the prosecutor, the detective affirmed that the first date—June 24, 2003—was "clearer" than the date on the last page.

¶10 Additionally, the detective testified about gang culture. According to the detective, gang members are extremely loyal to their gang and, in his opinion, when Carreon was asked to identify the shooter in a photographic line-up, she made a false identification to intentionally implicate a member of a rival gang.

¶11 Carreon did not testify. As material, the trial court instructed the jury on aiding and abetting first-degree reckless injury for the shooting of Roberto A. As we have seen, the jury found Carreon guilty. We now turn to whether the evidence was sufficient to support the jury's verdict.

II.

¶12 When reviewing the sufficiency of the evidence, we will reverse a conviction only if "the evidence, viewed most favorably to the state and the conviction, 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." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752, 755 (1990). The jury, not a reviewing court, determines the credibility of witnesses and weight of their testimony, ***Whitaker v. State***, 83 Wis. 2d 368, 377, 265 N.W.2d 575, 580 (1978), and resolves any conflicts in the evidence, ***State v. Daniels***, 117 Wis. 2d 9, 18, 343 N.W.2d 411, 416 (Ct. App. 1983).

¶13 On appeal, Carreon challenges only her conviction for aiding and abetting the first-degree reckless injury of Roberto A. The elements of first-degree reckless injury are: (1) the defendant caused great bodily harm to another human being; (2) by criminally reckless conduct; and (3) under circumstances that show an utter disregard for human life. WIS. STAT. § 940.23(1)(a); WIS JI—CRIMINAL 1250. To intentionally aid and abet first-degree reckless injury, the

defendant must know that another person is committing or intends to commit the crime of first-degree reckless injury and have the purpose to assist the commission of that crime. *See* ***State v. Ivy***, 119 Wis. 2d 591, 606, 350 N.W.2d 622, 630 (1984); WIS JI—CRIMINAL 405.

¶14 Carreon focuses her argument on the second element of first-degree reckless injury, whether her conduct was criminally reckless. Under WIS. STAT. § 939.24(1), criminal recklessness "means that the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk." The accompanying Judicial Council Committee Note explains that criminal recklessness requires both the creation of an objectively unreasonable and substantial risk of human death or great bodily harm and the actor's subjective awareness of that risk. Judicial Council Committee Note, 1988, § 939.24.

¶15 Carreon attacks the subjective knowledge elements of criminal recklessness and aiding and abetting, claiming that the evidence was insufficient to show that she knew or should have known that her passengers were armed and would shoot at Roberto A. While Carreon admits that a reasonable jury could find from the evidence at trial that she was a gang member, she contends that her gang membership alone did "not provide a reasonable basis to infer she knew her passengers would fire on Roberto A., who had no apparent gang affiliation and who did not engage in any action showing disrespect toward her passengers or the Latin Kings street gang." We disagree.

¶16 There was sufficient evidence for a reasonable jury to infer that Carreon knew that the purpose of the ride was to harm people whom her passengers viewed, correctly or incorrectly, as enemies of the Latin Kings. *See*

State v. Kimbrough, 2001 WI App 138, ¶12, 246 Wis. 2d 648, 656, 630 N.W.2d 752, 756 ("jury may base its findings regarding the defendant's mental state upon circumstantial evidence and the reasonable inferences such evidence permits").

- Evidence found in Carreon's car, including a photograph and a letter, shows that she had a significant affiliation with the Latin Kings street gang.

- While Carreon claimed that she only intended to give the men, whom she allegedly did not know, a ride home, her statement and witness testimony shows that she drove her passengers around for approximately two and one-half hours.

- Jose G.'s testimony shows that at least one of the passengers in Carreon's car was affiliated with the Latin Kings street gang.

- Significantly, Roberto A.'s testimony shows that Carreon drove her car along side Roberto A. long enough for one of her passengers to yell obscene words at him and flash a gang sign.

- Carreon did not go to the police after the shootings and, according to a detective, initially lied about her gang affiliation once she was apprehended.

- According to a detective, when Carreon was asked to identify the shooter from a photographic line-up, she identified a rival gang member. *See* ***Kimbrough***, 2001 WI App 138, ¶18, 246 Wis. 2d at 659, 630 N.W.2d at 757 (attempts to cover up involvement in a crime may be used to infer the defendant's awareness of the risk).

A reasonable jury could infer from this evidence that Carreon was aware of the risk of death or great bodily harm when she drove fellow gang members close to Roberto A.'s bicycle on June 25, 2003, just before he was shot.

By the Court.—Judgment affirmed and cause remanded with directions.

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