

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 28, 2006

Cornelia G. Clark
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. 2006AP320-CR

Cir. Ct. No. 2003CF5001

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

HERMAN W. HIGHSHAW,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 FINE, J. Herman W. Highshaw appeals from a judgment entered after a jury found him guilty of two counts of first-degree reckless injury, with the use of a dangerous weapon, for shooting and injuring Lorenzo Bond and Mark Hatcher, *see* WIS. STAT. §§ 940.23(1)(a), 939.63, and one count of being a felon in

possession of a firearm, *see* WIS. STAT. § 941.29(2)(a). Highshaw claims the evidence was insufficient to support the jury's verdicts on his first-degree-reckless-injury convictions. We affirm.

I.

¶2 On appeal, Highshaw does not dispute that he shot Bond and Hatcher outside a club in Milwaukee on August 7, 2003. He only challenges whether there was sufficient evidence to satisfy the “great bodily harm” element of his first-degree-reckless-injury convictions. *See* WIS. STAT. § 940.23(1)(a).

¶3 Bond testified at the trial that he was standing outside of a club when he turned around and saw Highshaw pointing a pistol at him. According to Bond, he then heard shots. One bullet went through his hand. Bond also testified that “one bullet grazed my face,” although he admitted that the facial wound could have been “from the concrete kicking up or it could have been a bullet.” Bond told the jury that he went to the hospital for treatment, and that the bullet wound to his hand caused scarring and permanent numbness.

¶4 Daniel Suszek, a detective with the Milwaukee County Sheriff's Office, testified that when he arrived at the scene of the shooting he saw a man, who turned out to be Hatcher, “laying on the ground” with a “pool of blood underneath his right arm.” According to Suszek, the man was “moaning.” The detective also told the jury: “He was having a hard time communicating with me. He was laying flat on his back with an apparent gunshot wound in his right arm, hand area, and he had a pool of blood underneath him. He's maybe in distress.” Suszek testified that the man was “stabilized at the scene and then transported to the hospital.”

¶5 Photographs received into evidence at the trial showed a perforating gunshot wound to Bond’s hand, a wound on the bridge of Bond’s nose, and a penetrating gunshot wound to Hatcher’s right forearm.

II.

¶6 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). Thus, an appellate court must “search the record to support the conclusion reached by the fact finder.” *State v. Owen*, 202 Wis. 2d 620, 634, 551 N.W.2d 50, 56 (Ct. App. 1996).

¶7 As we have seen, Highshaw challenges only his convictions for the first-degree reckless injury of Bond and Hatcher. 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. Highshaw focuses on the first element, claiming that the State did not prove that Bond and Hatcher suffered great bodily harm. We disagree.

¶8 Great bodily harm is defined in WIS. STAT. § 939.22(14) as: “bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.” (Emphasis added.) Highshaw claims that there is no evidence that Bond’s or Hatcher’s injuries created a substantial risk of death, serious permanent

disfigurement, or impairment of bodily functions or organs. Highshaw’s argument fails to address the final element—whether the victims suffered “other serious bodily injury.”

¶9 The phrase “or other serious bodily injury” has a distinct meaning independent of the other definitions of “great bodily harm” and was intended to broaden the scope of WIS. STAT. § 939.22(14) to include injuries in addition to those specifically identified in the statute. *La Barge v. State*, 74 Wis. 2d 327, 332, 246 N.W.2d 794, 796 (1976); *State v. Ellington*, 2005 WI App 243, ¶¶7–8, 288 Wis. 2d 264, 273–275, 707 N.W.2d 907, 911–912. Serious bodily injury is a phrase that is “well understood by any jury of ordinary intelligence.” *La Barge*, 74 Wis. 2d at 335, 246 N.W.2d at 797–798 (quoted source omitted); *see also Cheatham v. State*, 85 Wis. 2d 112, 124, 270 N.W.2d 194, 200 (1978) (“‘Great bodily harm’ still requires ‘serious’ injury, something greater than mere ‘bodily harm.’ Although the line between the two is not mathematically precise, it is one a jury is capable of drawing.”). Accordingly, a jury may find that a victim has suffered “great bodily harm” as long as the victim has suffered an injury that is “serious,” defining the term as it is ordinarily understood, regardless of whether it creates a substantial risk of death, permanent disfigurement, or impairment.

¶10 There was sufficient evidence for a reasonable jury to find that Bond and Hatcher were seriously injured when they were shot by Highshaw. For Bond, the evidence showed that:

- a bullet went through his hand;
- a bullet or a piece of concrete grazed the bridge of his nose;
- Bond sought treatment at a hospital for his injuries; and

- the bullet wound to his hand left permanent scarring and numbness.

For Hatcher, the evidence showed that:

- a bullet hit him in the right forearm;
- Hatcher was found “laying on the ground” in a “pool of blood”;
- Hatcher was “moaning” and “having a hard time communicating with” an investigating detective; and
- Hatcher was “stabilized at the scene” and taken to a hospital.

A reasonable jury could find from this evidence that Bond and Hatcher suffered great bodily harm. *See, e.g., La Barge*, 74 Wis. 2d at 335, 246 N.W.2d at 798 (multiple cuts and stab wounds that required sutures and hospitalization constitute serious bodily injury).

By the Court.—Judgment affirmed.

Publication in the official reports is not recommended.

