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DISTRICT I

September 4, 2024

To:

Hon. David A. Feiss
Reserve Judge

Gabriel William Houghton
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Daniel J. O'Brien
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP1250-CR

State of Wisconsin v. Dagee Shawn Daniels (L.C. # 2021CF102)

Before White, C.J., Donald, P.J., and Colón, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Dagee Shawn Daniels appeals from a judgment convicting him of first-degree reckless injury with the use of a dangerous weapon and of being a felon in possession of a firearm. He also appeals from the order denying his postconviction motion for relief. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The State charged Daniels with two counts of first-degree reckless injury with the use of a dangerous weapon and of being a felon in possession of a firearm. The charges stemmed from a shooting that took place outside of a Milwaukee club on January 6, 2021. According to the complaint, while exiting the club, Z.M. backed her car into a silver Cadillac in the parking lot. The driver and passenger of the Cadillac, later identified as Lavell Garrett and Daniels, exited the car and approached Z.M. Z.M. told police that she apologized for the accident and offered Garrett \$300 for the damage to his car but that Garrett wanted more money and displayed a silver firearm in his pocket. Q.P., the passenger in Z.M.'s car, told police that she got out of the car and went to the driver's side to be near Z.M. She also told police that two unidentified men whom she recognized from the bar approached Z.M.'s car and that one of the men offered Garrett \$200 for the damages. The complaint further states that Z.M. began to call 911 when she heard several gunshots. Z.M. was shot and paralyzed as a result of the shooting.

The matter proceeded to trial where multiple witnesses, including Z.M., Q.P., law enforcement, and Daniels, testified. The jury found Daniels guilty of one count of first-degree reckless injury with the use of a dangerous weapon (as to Z.M.) and of being a felon in possession of a firearm. The jury acquitted Daniels of the charge of first-degree recklessly endangering safety.

As relevant to this appeal, Daniels filed a postconviction motion arguing that the evidence at trial was insufficient to support the conviction for first-degree reckless injury to Z.M. The postconviction court held a hearing and denied the motion. This appeal follows.

Whether the evidence was sufficient to sustain a guilty verdict in a criminal prosecution is a question of law that we review independently. *State v. Smith*, 2012 WI 91, ¶24, 342 Wis. 2d

710, 817 N.W.2d 410. A defendant “bears a heavy burden in attempting to convince a reviewing court to set aside a jury’s verdict on insufficiency of the evidence grounds.” *State v. Booker*, 2006 WI 79, ¶22, 292 Wis. 2d 43, 717 N.W.2d 676. When reviewing the sufficiency of the evidence to support a conviction, an appellate court “may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the [S]tate and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

It is the function of the jury, not this court, to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Id.* at 506. “Thus, when faced with a record of historical facts which supports more than one inference, an appellate court must accept and follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law.” *Id.* at 506-07. Ultimately, if any possibility exists that the jury could have drawn the appropriate inferences from the evidence adduced at trial to find the defendant guilty, then we may not overturn the jury’s verdict, even if we believe the jury should not have found guilt based on the evidence before it. *Id.* at 507. The standard for reviewing the sufficiency of the evidence is the same regardless of whether the evidence against the defendant is direct or circumstantial. *Id.* at 501.

In order to convict Daniels of first-degree reckless injury, the State was required to prove that: (1) Daniels caused great bodily harm to Z.M.; (2) that Daniels caused great bodily harm by criminally reckless conduct; and (3) that the circumstances of Daniels’s conduct showed utter disregard for human life. WIS JI—CRIMINAL 1250. Daniels contends that the State failed to prove the necessary elements because the jury’s determination that Daniels caused Z.M.’s injury

was speculative. He contends that there were other shooters present, that the injury-causing bullet was never recovered, and that the unidentified men at the scene had an obstructed view of Z.M. Daniels also contends that he was merely acting in self-defense because the unidentified men who approached Z.M.'s car were also shooting, thus, the State failed to prove that he acted with utter disregard for human life. We disagree that the State failed to prove the necessary elements.

Daniels admitted that he was the first one to begin firing his gun, that he was intoxicated, and that he was prohibited from possessing a firearm. Although the injury-causing bullet is lodged in the victim and was therefore never recovered, the evidence established that Daniels fired twelve shots in Z.M.'s general direction. Z.M. testified that she was "halfway in halfway out" of her car with her back towards Daniels and that Q.P. pushed her to the ground after the shooting began. Surveillance video showed that Daniels's location and the angle at which he was shooting made it plausible that he caused Z.M.'s injury. Q.P. also positively identified Daniels from a photo array as the man who began shooting first.

As to Daniels's claim that he was acting in self-defense because one of the unidentified men was also shooting, we note first that self-defense is not a valid legal defense when the reckless injury is incurred by a third-party. *See* WIS. STAT. § 939.48(3).² Moreover, the facts in

² WISCONSIN STAT. § 939.48(3) provides:

(continued)

the record support the jury's finding that Daniels acted with utter disregard for human life. Daniels admitted that the unidentified man did not point a gun at him before Daniels fired. Daniels said he shot first to "[get] the upper hand" because he was unsure what the man was thinking. As stated, the jury also viewed surveillance video of the shooting and heard testimony that Daniels fired twelve shots while intoxicated and while knowing that he was prohibited from possessing a firearm. The evidence supports the jury's verdict.

For the foregoing reasons, we affirm the judgment of conviction and the order denying Daniels's postconviction motion.

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

The privilege of self-defense extends not only to the intentional infliction of harm upon a real or apparent wrongdoer, but also to the unintended infliction of harm upon a 3rd person, except that if the unintended infliction of harm amounts to the crime of first-degree or 2nd-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, first-degree or 2nd-degree reckless injury or injury by negligent handling of dangerous weapon, explosives or fire, the actor is liable for whichever one of those crimes is committed.