COURT OF APPEALS
DECISION
DATED AND RELEASED

July 2, 1996

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. 95-1167-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MIGHTY HOWELL,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN A. FRANKE, Judge. *Affirmed*.

Before Sullivan, Fine and Schudson, JJ.

PER CURIAM. Mighty Howell appeals, after a bench trial, from a judgment of conviction for first-degree intentional homicide, and attempted armed robbery—both as a party to a crime—as well as possession of a firearm by a juvenile. He also appeals from an order denying his motion for postconviction relief. The essence of Howell's argument is that there was

insufficient evidence at trial to support his conviction for first-degree intentional homicide.

I. BACKGROUND.

Roger Bucholz was shot and killed while driving his automobile near 35th Street and Clybourn Avenue in the City of Milwaukee. Howell, a seventeen-year-old juvenile, was arrested and implicated in the homicide. The juvenile court waived jurisdiction and Howell's case was tried in adult court. Howell then waived his right to a jury trial, and the Honorable John A. Franke presided over the bench trial. The following facts were presented at trial.

After watching a movie, Howell and several others went to 35th Street and Clybourn Avenue intending to commit a robbery. When they reached the area, Howell had a .25-caliber handgun in his possession. An accomplice, acting as a "look-out," spotted an approaching automobile and signalled the group to rob the car.

It is undisputed that the car driven by Bucholz stopped at the intersection of 35th Street and Clybourn Avenue, that Howell pounded on the car's back window, and that Howell then demanded Bucholz's "stuff." Bucholz drove off and Howell fired four shots at the car. The trial court found that all four shots were fired at Bucholz. Howell moved around the car as he shot. Bucholz drove the car a short distance until it crashed into a building. He later died from a single gunshot wound.

The trial court found Howell guilty of first-degree intentional homicide, as party to a crime, and sentenced him to life in prison, with a parole eligibility date of 2038. Further facts are discussed below.

II. ANALYSIS.

At issue is whether there was sufficient evidence to convict Howell of first-degree intentional homicide, as party to a crime. We conclude

that the undisputed evidence that Howell shot four times at Bucholz from close range is sufficient to support the guilty verdict.

> [I]n 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 state 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. 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, 757-58 (1990) (citations omitted).

Howell does not contest the fact that he fired four times at Bucholz's car, but he argues that there was insufficient evidence to conclude that he intended to kill Bucholz. We disagree.

Section 940.01(1), STATS., provides in relevant part: "Whoever causes the death of another human being with intent to kill that person or another is guilty of a class A felony." Section 939.23(4), STATS., defines criminal intent as, "that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result."

Before reaching its conclusion, the trial court made, *inter alia*, these findings of fact: Howell "raised his arm and pointed a gun at the victim, firing four shots at pointblank range"; the shots were fired from between ten and five feet from the car; one of the four gunshots killed Bucholz. Our review of the record casts no doubt on these findings of fact. Additionally, based upon these

findings, and viewing the evidence most favorably to the verdict, we cannot overturn the verdict.

A trier of fact, in this case the trial court, could reasonably conclude that Howell intended, as criminal intent is defined in our statutes, to cause Bucholz's death. A trier of fact "may infer intent from the circumstances surrounding one's acts since direct proof of intent is rare." ***State v. Weeks***, 165 Wis.2d 200, 210, 477 N.W.2d 642, 646 (Ct. App. 1991). Further, the facts support a reasonable conclusion "that the shooter was aware that shooting at such a close range was `practically certain' to cause" Howell's death. ***Id.***; *see also* ***State v. Webster***, 196 Wis.2d 308, 324, 538 N.W.2d 810, 816 (Ct. App. 1995) (stating defendant's firing of a gun at victim from "close range" supports reasonable jury's conclusion of intent to kill victim).

We acknowledge that the trial court lapsed into an amorphous legal discussion surrounding Howell's formation of the necessary intent while rapidly pulling the trigger four times. The trial court's legal discussion muddied the waters surrounding its findings of fact. Nonetheless, based on our "sufficiency of the evidence" standard of review, we conclude that the verdict is clearly supported by the evidence. The evidence is overwhelming to support a verdict that Howell intended to kill Bucholz when he fired a handgun four times at Bucholz from close range. Our analysis need not go any further.[1]

By the Court.—Judgment and order affirmed.

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

[1] While Howell's appellate brief challenges the trial court's legal ruminations of intent, his argument is essentially a sufficiency of the evidence claim. Because we dispose of his appeal on this overarching ground, we do not address these non-dispositive challenges. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).