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DISTRICT II

February 11, 2015

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

2014AP1269-CR

State of Wisconsin v. Crystal M. Diercks (L.C. # 2012CF111)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Crystal Diercks appeals from a judgment convicting her of battery to a law enforcement officer and resisting or obstructing that officer and from an order denying her postconviction motion. On appeal, she challenges as inadmissible lay opinion the officer's testimony that Diercks must have caused a screen door to close on the officer's arm, causing injury. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate

for summary disposition. WIS. STAT. RULE 809.21 (2011-12).¹ We conclude that the circuit court properly admitted the officer's lay opinion. We affirm.

A conviction for battery to a law enforcement officer requires proof that the defendant acted intentionally, i.e., the defendant must have "acted with the mental purpose to cause bodily harm" to the officer. WIS JI—CRIMINAL 1230; WIS. STAT. § 940.20(2). Diercks's conviction arose out of a confrontation with Officer Winsted when the officer responded to a call involving Diercks's children at Diercks's apartment complex. The officer was injured when the screen door to Diercks's apartment forcefully closed on her arm. The issue on appeal arises from the circuit court's decision to allow Officer Winsted to testify that the force with which the screen door closed upon her arm was generated by Diercks manipulating the screen door.

Opinion testimony from a lay witness is limited to opinions or inferences that are "[r]ationally based" on the witness's perception, "[h]elpful to a clear understanding of the witness's testimony or the determination of a fact in issue," and "[n]ot based on scientific, technical, or other specialized knowledge." WIS. STAT. § 907.01. Whether to admit opinion testimony is within the circuit court's discretion. *Wester v. Bruggink*, 190 Wis. 2d 308, 317, 527 N.W.2d 373 (Ct. App. 1994). We will uphold the circuit court's discretionary decision if the record shows a reasonable basis for the decision. *Id.*

We summarize the officer's testimony to show the basis for the circuit court's discretionary decision to admit the officer's lay opinion. During trial, Diercks objected

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

repeatedly to the State's attempt to introduce Winsted's lay opinion testimony about how the screen door closed on her arm.

After responding to the scene, Winsted determined that Diercks's conduct warranted a citation. However, Diercks refused to comply with the officer's instructions to accompany her to the squad car. Diercks walked toward her apartment entrance and failed to stop when directed to do so by the officer. The officer grabbed Diercks's left arm to stop her. Diercks reached for her apartment screen door while using her elbow to push the officer away. The screen door struck the officer's arm with enough force to leave scratches and a bruise and to cause the officer pain. The strike caused Winsted to relinquish her hold on Diercks, and Diercks slammed her inner apartment door.

Winsted described the force of the door closing on her arm as inconsistent with the door shutting on its natural return; rather, the force was consistent with force being exerted upon the door. The officer described the door as a standard screen door that would shut of its own accord if left unattended. Diercks's screen door was similar to all the other screen doors at the apartment complex with which the officer was familiar. The officer did not see Diercks manipulate the door, but the officer denied that she shut the door on her own arm. Only the officer and Diercks were struggling at the door to Diercks's apartment, and no one else could have pulled the door shut on her arm. There were no environmental factors, such as wind, that would have caused the screen door to close forcefully. Diercks cross-examined Winsted about the door.

In her trial testimony, Diercks denied that she intended to injure Winsted, that she slammed the door on the officer, or that she engaged in any act that caused the screen door to

close on the officer's arm. She testified that the screen door slams by itself and has injured other family members. The jury convicted Diercks of battery to a law enforcement officer. The circuit court denied Diercks's postconviction motion alleging insufficient evidence of her intent to injure Winsted.

On appeal, Diercks argues that the circuit court misused its discretion when it permitted Winsted to render her opinion that the door could not have closed on her arm without human intervention. Diercks argues that the officer's opinion was speculative. We disagree and conclude that Winsted's opinion about the circumstances under which the door closed on her arm was rationally based on her perceptions, was helpful to an understanding of a fact in issue, and was not based on specialized knowledge for which expert testimony would have been required. WIS. STAT. § 907.01. The record indicates that Winsted's opinion that the door closed on her arm with a degree of force in excess of the door's closing mechanism had adequate foundation in the officer's description of the door and familiarity with the doors in the complex. The circuit court did not erroneously exercise its discretion when it permitted Winsted to offer her lay opinion based on her perceptions.

The jury had to consider the conflicting versions before it: Winsted opined that Diercks closed the door on her arm; Diercks denied doing so. It was for the jury to assess the credibility of these witnesses. *Nabbefeld v. State*, 83 Wis. 2d 515, 529, 266 N.W.2d 292 (1978). Two other witnesses testified to Diercks's combative and confrontational manner with the officer, and they heard the second, inner apartment door slam even though they were standing behind the apartment complex. "If more than one inference can be drawn from the evidence, the inference which supports the jury finding must be followed unless the testimony was incredible as a matter of law." *State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989). To the extent the jury

needed to infer that Diercks forcefully closed the screen door on Officer Winsted's arm, the jury was permitted to draw that inference based on this record.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals