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**DISTRICT I**

August 28, 2015

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

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2014AP2343-CR      State of Wisconsin v. Keith L. Thompson, Jr.  
(L.C. #2011CF3407)

Before Curley, P.J., Kessler and Bradley, JJ.

Keith L. Thompson, Jr., appeals from a judgment entered after a jury found him guilty of burglary as a party to a crime and as a repeater. *See* WIS. STAT. §§ 943.10(1m)(a), 939.05, 939.62(1)(c) (2011-12).<sup>1</sup> He contends that there was insufficient evidence to support his conviction. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21(1).

When we review the sufficiency of the evidence to support a jury's verdict, the test is not whether this court is convinced of the defendant's guilt beyond a reasonable doubt, but whether a jury, acting reasonably, could be so convinced by evidence that it had a right to believe and accept as true. *See State v. Poellinger*, 153 Wis. 2d 493, 503-04, 451 N.W.2d 752 (1990). The credibility of the witnesses and the weight of the evidence are for the jury. *Id.* at 504.

We view the evidence in the light most favorable to the verdict and, if more than one reasonable inference can be drawn from the evidence, we must accept the inference necessarily drawn by the jury. *Id.* The jury's verdict will be reversed “only if, viewing the evidence most favorably to the [S]tate and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt.” *State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation and emphasis omitted).

Convictions may be supported solely by circumstantial evidence. *Poellinger*, 153 Wis. 2d at 501. In some cases, circumstantial evidence may be “stronger and more satisfactory than direct evidence.” *Id.* The standard of review is the same whether the conviction relies upon direct or circumstantial evidence. *Id.* at 503.

The applicable jury instruction for burglary with intent to steal required the State to prove four elements: “1. The defendant intentionally entered a building[;] 2. The defendant entered the building without the consent of the person in lawful possession[;] 3. The defendant knew that the entry was without consent[;] and 4. The defendant entered the building with intent to steal.” WIS JI—CRIMINAL 1421 (some formatting altered; footnotes omitted). For party-to-a-crime

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

liability to attach in this case, the State had to prove that Thompson intentionally aided and abetted the commission of the burglary by either “assist[ing] the person who commit[ted] the crime; or [was] ready and willing to assist and the person who commit[ted] the crime kn[ew] of the willingness to assist.” WIS JI—CRIMINAL 400 (some formatting altered; bullet points omitted).

Trial testimony revealed that in July of 2011, police received a phone call about a suspicious white vehicle in a Milwaukee neighborhood.<sup>2</sup> The caller reported that the vehicle was parked when she initially saw it. The caller also observed several men, two of whom were standing or walking and a third man who was behind them. After contacting the police, the caller saw the vehicle heading westbound down a street in her neighborhood.

A second witness testified that she saw a man run to the back of a neighbor’s house at 8170 West Katherine Avenue and open the door. The witness then saw the man on the side of the house “creeping slowly and looking.” Upon hearing a police siren, the man ran to the backyard of the house and took off.

The victim of the burglary, who lived at 8170 West Katherine Avenue, testified that the back door of her house was kicked in, and she found her television, which had been in her bedroom, on her back porch. Two of the victim’s rings and a pendant were also taken from her bedroom and from her daughter’s room.

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<sup>2</sup> Although the witness did not testify to the actual license plate number, she stated that she believed she provided dispatchers with the number. Subsequent witnesses confirmed the number she reported.

A police officer testified that he was dispatched to the scene and observed a car that matched the description given by the caller.<sup>3</sup> The officer approached the vehicle, which started to pull out of the driveway at 8170 West Katherine Avenue where it had been parked. The officer conducted a traffic stop and found two people in the vehicle. One of these individuals was Thompson. The officer stayed with Thompson and the other individual who was in the car while his partner went to the house where the car had been parked. The partner reported that the back door of the home was kicked in and there was a television on the back porch.

Another police officer testified that he located the stolen rings and pendant at a retailer that bought and sold gold jewelry. The officer testified that the person who sold the jewelry to the store was Keith L. Thompson, Sr.

The officer who initially found the television on the back porch testified regarding how burglaries are committed. He said that, based on his training and experience, all three individuals would not have entered the home. Instead, one or two people would go into the residence and remove the goods, and the third person would act as the lookout and getaway driver.

The jury also heard that when Thompson was arrested, there were no stolen goods in the vehicle or on his person.

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<sup>3</sup> There was testimony that the police arrived on the scene twenty minutes after the call was made.

On appeal, Thompson asserts that the guilty verdict against him was “based on mere speculation.” He claims the State failed to prove that he had a connection to the burglary, the third person who committed the burglary, or the jewelry that was stolen and eventually sold.

We disagree. From the evidence detailed above, viewed in the light most favorable to the verdict, the jury could reasonably have inferred that Thompson was a party to the crime of burglary. He was found in a car outside a home that was in the process of being burgled. There was every reason to believe that he was one of one of the three men who had been wandering in the neighborhood shortly before the break-in. Another man, who was observed by a neighbor running to the backyard of the victim’s house, was never caught. However, the stolen goods were pawned by a man who, although it was not proven, seemed to be Thompson’s father. As summed up by the State:

Perhaps only one or two of these coinciding facts might not support an inference of guilt. For example, without more, had Thompson simply been driving in the neighborhood, or had his father simply pawned stolen goods, a jury might justifiably be questioned in inferring guilt. But here, the coincidences painted too vivid a picture to be dismissed as mere speculation.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*