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DISTRICT II

May 4, 2016

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

2015AP1623-CR State of Wisconsin v. David A. Slaughter (L.C. # 2013CF1419)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

David A. Slaughter appeals from a judgment convicting him of eight crimes. He contends that there was insufficient evidence to support one of his convictions. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[1] We affirm the judgment of the circuit court.

[1] All references to the Wisconsin Statutes are to the 2013-14 version.

The State charged Slaughter with eight crimes stemming from two domestic violence incidents. Two of the counts—battery and criminal damage to property—arose from an incident occurring on December 13, 2013. The other six counts—second-degree recklessly endangering safety with use of a dangerous weapon, substantial battery, battery, disorderly conduct, resisting an officer, and obstructing an officer—arose from an incident occurring on December 28, 2013. Following a bench trial, the circuit court convicted Slaughter on all eight counts.

On appeal, Slaughter challenges only his conviction for second-degree recklessly endangering safety with use of a dangerous weapon. That count was based on Slaughter's action of hitting the victim in the head with a hammer. Slaughter contends that there was insufficient evidence to show that his conduct was criminally reckless.[2]

We will not reverse a conviction for lack of sufficient evidence "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." *See* ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). This rule is the same regardless of whether the finder of fact is a judge or a jury. ***Krueger v. State***, 84 Wis. 2d 272, 282, 267 N.W.2d 602 (1978). Whether the evidence is sufficient to support a conviction is a question of law that we review de novo. *See* ***State v. Booker***, 2006 WI 79, ¶12, 292 Wis. 2d 43, 717 N.W.2d 676.

[2] One of the elements of Slaughter's offense was that he endangered the safety of another by criminally reckless conduct. WIS JI—CRIMINAL 1347. Criminally reckless conduct is defined as "the conduct created a risk of death or great bodily harm to another person; and the risk of death or great bodily harm was unreasonable and substantial; and the defendant was aware that [his or her] conduct created the unreasonable and substantial risk of death or great bodily harm." ***Id.***

At trial, the victim testified that Slaughter struck her both on her forehead and on the top of her head with a metal hammer. She likened the blows to the tapping used by doctors to test knee-jerk reflexes. The treating physician, Dr. Matthew Stauffer, testified that the victim had "soft tissue swelling on her forehead," otherwise known as a knot or a bump, and told him that she had been struck by a hammer. Dr. Stauffer ordered a CAT scan to determine whether there was any bleeding occurring inside the victim's head or whether she had a skull fracture.

Slaughter suggests that this evidence was insufficient, as Stauffer did not explicitly establish that the type of hammer blows described by the victim could cause a substantial risk of death or great bodily harm. We disagree. To begin, expert testimony is not necessary where, as here, the trier of fact could reach a conclusion based on its common knowledge and experience. *See* ***State v. Owen***, 202 Wis. 2d 620, 632, 551 N.W.2d 50 (Ct. App. 1996) (rejecting an argument that expert testimony was required to prove that a forceful slap to the chest of an infant caused great bodily harm). Moreover, Stauffer obviously believed that the blows could cause a substantial risk of death or great bodily harm, as evidenced by his decision to order a CAT scan.

In the end, viewing the evidence most favorably to the State and the conviction, we are satisfied that the trier of fact, acting reasonably, could have found that Slaughter's conduct was criminally reckless. Accordingly, we affirm.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals