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December 6, 2018

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

2017AP1694-CR

State of Wisconsin v. John R. King (L.C. # 2015CF2740)

Before Lundsten, P.J., Sherman and Blanchard, JJ.

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).

John R. King appeals a judgment of conviction entered after a jury found him guilty of battery to a peace officer, Deputy N.K., and resisting an officer. 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 (2015-16).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

King, a jail inmate, covered the camera and window in his jail cell with wet toilet paper. Deputies need to be able to see into an inmate's cell for safety reasons. Despite repeated requests by the deputies, King refused to remove the toilet paper. Deputies told King they would have to enter his cell if he did not take down the paper. King said he would stand his ground and that he was "going to do this all day, every day." King banged on his door and said, "Let's go right now," and "Fuck the police, I'm ready." A deputy asked King if he would fight with deputies if they entered his cell, and King said yes.

Deputies warned King that they would release pepper spray into his cell, but King still refused to cooperate. Deputy N.K. and his supervisor tried to release pepper spray through the cell's food slot, but King blocked it with a mattress. King said, "I eat that shit. Spray some more." King had a T-shirt or towel wrapped around his face. Inmates sometimes cover their faces to prevent officers from effectively using pepper spray. King also had a towel or similar material wrapped around his waist. Inmates sometimes wrap material around their waists to resist a Taser. Deputies asked King to allow them to handcuff him through the food slot but King refused and tried to grab the tethering device. The tether could be used by an inmate as a weapon.

Given King's continued noncompliance, about five or six deputies dressed in protective gear entered the cell. King threw punches at the deputies and flailed his arms. A deputy ended up underneath King and other deputies. A supervisor tried to pull the deputy out from under King. Deputy N.K. entered with a Taser when he saw King on top of the deputy in "a mount position." Deputy N.K. was wearing his uniform without protective gear. King was in a defensive stance with a low center of gravity, like a boxer. King was "swinging his arms in a

slapping and punching motion.” Deputy N.K. tased King in the left buttock, and King stopped resisting.

While in King’s cell, Deputy N.K. felt something on his shin and noticed a “bruise and slight cut” on it. He might have injured his shin on the concrete bunk used to support King’s mattress. The injury was painful. Deputy N.K.’s ankle began hurting a few hours after the incident. He was taken to the hospital and was diagnosed with a sprained ankle.

The State charged King with battery to a peace officer and resisting a peace officer causing soft tissue injury. Deputy N.K. was the victim of the battery charge. The resisting charge was premised on King’s resistance to several deputies, and Deputy N.K.’s sprained ankle was the alleged soft tissue injury.

King had a one-day trial, which began with an outburst before the jury entered the courtroom. King spoke out of turn and complained that he was being “railroaded.” The circuit court twice warned King that he would be removed from the courtroom if he could not control himself. King told the court to remove him from the courtroom and that he would not participate. King escalated his use of profanity and was removed from the courtroom. He returned a short time later and was allowed to watch a jail video of the underlying altercation. King kept complaining and was warned several times by the court that he would have to leave if he did not “stop shouting out.” King continued his disruptive conduct and was removed from the courtroom for a second time.

King was permitted to return to the courtroom while the jury was in recess. The court warned him that he had been removed twice already and would be removed again if he

“disrupt[ed] the proceedings any further.” The court said that it might not let him return to the courtroom if he had to be removed again. King apologized for his “outburst.”

Over objection, Deputy N.K. testified that he was diagnosed with a sprained ankle. The court took judicial notice that “[a]n ankle sprain requiring medical attention or examination is a soft tissue injury.”

Later, King was again disruptive, asking his trial attorney at least six times, “What are you doing?” The court gave King his “last warning,” stating that if King made “any more noise” he would be “out of here permanently.” King “began shouting at the court.” The court warned him three more times to stop, but King continued his profanity-laden argument and was removed from the courtroom. King continued screaming for about five minutes in the court’s outer chamber. In light of King’s conduct, the circuit court determined that King forfeited his right to testify at trial. The court reasoned that King had to be removed from the courtroom three times due to his outbursts, was removed a fourth time after he changed his mind about pleading guilty, and “in each of the four instances he left screaming at the court or counsel.” The jury convicted King of the battery offense as charged. It also convicted him of the resisting charge but acquitted him of the sentence enhancer for causing a soft tissue injury. King appeals.

King first challenges the circuit court’s determination that he forfeited his right to testify. A criminal defendant has a constitutional right to testify in his or her own defense at trial. *State v. Anthony*, 2015 WI 20, ¶46, 361 Wis. 2d 116, 860 N.W.2d 10. However, a defendant may forfeit the right to testify by exhibiting behavior “incompatible with the assertion of [that] right.” *Id.*, ¶64. “[A] forfeiture determination may not be arbitrary or disproportionate to the purposes it is designed to serve. Stated differently, a complete denial of the right to testify must be

reasonable under the circumstances of the case.” *Id.* (citation omitted). We accept a circuit court’s factual findings unless clearly erroneous, but independently apply constitutional principles to the facts. *Id.*, ¶43.

The circuit court here reasonably determined that King forfeited his right to testify. As in *Anthony*, the circuit court’s determination was justified by its interests in (1) “control[ing] the presentation of evidence so as to ensure the fairness and reliability of the criminal trial process,” and (2) preserving “dignity, order, and decorum in the courtroom.” *See id.*, ¶¶75, 80. The circuit court found that King had “caused a tremendous amount of delay,” that he had done so “intentionally,” and that King’s goal was to delay the trial “rather than to have a fair explanation of the evidence.” King repeatedly used profane language and insulted the judge, calling him a “character” and stating that the judge was “in contempt.” Each time that King was removed from the courtroom, he “left screaming at the court or counsel.”

King contends that, while he may have been unruly at various times during the proceedings, the circuit court had no good reason to believe that he would be disruptive during his testimony, when he was motivated to tell his side of the story. We are not persuaded. As stated in *Anthony*: “[T]he circuit court was not required to put [the defendant] on the stand and wait for the fireworks.” *Id.*, ¶94. Although the circuit court repeatedly warned King that his behavior could result in removal from the courtroom, King continued his disruptive and unruly conduct. By providing warnings and allowing King to return to the courtroom multiple times, the circuit court afforded King plenty of opportunity to change his conduct. King did not do so. It was reasonable for the circuit court to determine that King would continue to disrupt the fair presentation of evidence, and the dignity, order, and decorum of the courtroom, from the witness stand.

Next, King claims that there was insufficient evidence to support the causation and intent elements of his battery conviction. We review the sufficiency of the evidence *de novo*, but in the light most favorable to sustaining the conviction. *State v. Hanson*, 2012 WI 4, ¶15, 338 Wis. 2d 243, 808 N.W.2d 390. We will sustain a conviction unless the evidence is so insufficient “that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

King argues that there is insufficient evidence to establish causation because “[t]he State did not present any evidence that Mr. King hit Deputy N.K.” and because the deputy’s injuries were consistent with hitting his shin on a concrete slab. We disagree with his reasoning. Even if Deputy N.K.’s injuries arose from contact with a concrete slab, King’s violent conduct was a substantial factor in producing those injuries. *See State v. Miller*, 231 Wis. 2d 447, 456-57, 605 N.W.2d 567 (Ct. App. 1999) (causation is established if the actor’s conduct was a “substantial factor” in producing the result, even if it was not the sole or primary factor). King’s conduct foreseeably caused the deputies to enter his cell, and King’s continued violent resistance created the altercation leading to Deputy N.K.’s injuries. A reasonable juror could infer that King “set into motion the events” which led to the prohibited result. *See id.* at 457 (quoted source omitted).

We also reject King’s claim that the evidence was insufficient to support an inference that he intended to cause bodily harm to Deputy N.K. “‘Intentionally’ means 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.” WIS. STAT. § 939.23(3). “Although intent is usually not susceptible of direct proof, it may often be inferred from a person’s voluntary acts because of the almost self-evident principle of human conduct that people normally intend the natural and

probable consequences of their acts.” *State v. Ehlenfeldt*, 94 Wis. 2d 347, 361, 288 N.W.2d 786 (1980). A defendant need not specifically intend the particular injury caused by his or her actions. *See State v. Gould*, 56 Wis. 2d 808, 812-14, 202 N.W.2d 903 (1973) (“all that is required is the intent to do” the proscribed degree of harm).

A reasonable juror could find beyond a reasonable doubt that King intended to harm the deputies who entered, including Deputy N.K. King repeatedly challenged and threatened deputies. He said, “Fuck the police, I’m ready” and was “threatening to fight.” He “threatened to kill ... any deputy who went in his cell.” King took measures to protect himself from the impact of pepper spray and Tasers. He was “trying to fight with” and was “taking a swing at” deputies entering his cell. King was “extremely agitated” and was “flail[ing]” “any limb, arms, that he could at [deputies] to try and fight with [them].” Deputy N.K. carried a Taser and was particularly vulnerable as one of two officers not wearing protective gear. Before being tased, King was “still physically fighting with” deputies. The evidence supports an inference that King either acted with the purpose to harm Deputy N.K. or was aware that his actions were practically certain to cause bodily harm to Deputy N.K. *See id.* at 813.

Finally, King asserts that his right to confront his accusers was violated when Deputy N.K. testified over objection that he was diagnosed with a sprained ankle. Assuming without deciding that this testimony should not have been admitted, any error was harmless. *See State v. Deadwiller*, 2013 WI 75, ¶41, 350 Wis. 2d 138, 834 N.W.2d 362 (a confrontation clause violation is subject to harmless error analysis). It appears that the jury declined to rely on the victim’s injury testimony; it found King guilty of the resisting charge but acquitted him of the sentence enhancer for causing a soft tissue injury.

Upon the foregoing reasons,

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

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

Sheila T. Reiff
Clerk of Court of Appeals