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February 13, 2019

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

2018AP744-CR State of Wisconsin v. Michael G. Baker (L.C. #2016CF181)

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

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).

Michael Baker appeals from a judgment of conviction entered upon a jury's guilty verdict. Baker asserts the evidence at his trial was insufficient to convict him of first-degree recklessly endangering safety. 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 (2017-18).[1] We affirm.

While we review de novo whether evidence presented at trial is sufficient to sustain a guilty verdict, we "consider the evidence in the light most favorable to the State and [will] reverse the conviction only where the evidence 'is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.'" ***State v. Smith***, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410 (citation omitted). We will uphold the conviction "if there is any reasonable hypothesis that supports it." ***Id.*** "[I]t is inappropriate for an appellate court to 'replace [ ] the trier of fact's overall evaluation of the evidence with its own.'" ***Id.***, ¶33 (alteration in original; citation omitted). This is a "deeply rooted tradition of judicial deference for jury verdicts. Indeed, there are few legal principles more indisputable than the idea that a jury is in a far better position to evaluate the evidence than is a reviewing court." ***Id.***

To convict Baker of first-degree recklessly endangering safety, the State needed to prove that Baker: (1) endangered the safety of another, (2) by criminally reckless conduct, and (3) under circumstances that showed utter disregard for human life. WIS. STAT. § 941.30(1); WIS JI—CRIMINAL 1345. The Wisconsin Jury Instructions provide that "criminally reckless conduct" is conduct that creates an "unreasonable and substantial" "risk of death or great bodily harm" and the defendant is aware his/her conduct creates such a risk. WIS JI—CRIMINAL 1345. "Great bodily harm" means injury which "creates a substantial risk of death," "causes serious permanent

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

disfigurement," or "causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily injury." ***Id.*** In determining whether the circumstances showed "utter disregard for human life," the jury considers "what the defendant was doing; why the defendant was engaged in that conduct; how dangerous the conduct was; how obvious the danger was; whether the conduct showed any regard for life; and, all other facts and circumstances relating to the conduct." ***Id.*** The jury is also to consider "the defendant's conduct after the act alleged to have endangered safety to the extent that it helps [the jury] decide whether or not the circumstances showed utter disregard for human life at the time the act alleged to have endangered safety occurred." ***Id.***

The relevant evidence presented at Baker's trial is as follows. Sharon Wienke, owner of a tow company, testified that she towed Elizabeth Jackson's Saturn to her tow lot after Jackson had been stopped by police for driving without license plates. The following day, Jackson and Baker drove to the lot in a Ford F-150 truck in order to retrieve the Saturn. Wienke asked Baker for his driver's license and proof that he owned the Saturn, but Baker refused to provide such items and became upset after Wienke's repeated requests for this information. Baker got into the Saturn, closed the door, and started the vehicle. Wienke stood in front of the Saturn so Baker could not leave with it. Nonetheless, Baker

> put it in drive, and … he, like, bumped into my legs ... and he started pushing me backwards. Because it was snowing, I was sliding backwards, and I just put my hands on the hood, and then he kept going, and then he stopped, tried to go a little bit more, but I still wasn't moving. Then he put it in reverse and tried to go faster, and that's when I just jumped out of the way.

At that time, Joseph Medina, the owner of the property and another towing business that operated out of that same location, drove onto the property. Wienke told Medina to stop the

Saturn, hoping Medina would block the driveway so Baker could not leave. Too far into the driveway to block the Saturn, Medina exited his vehicle, approached the Saturn, and tried to get Baker to roll down the window. Medina told Baker to stop the Saturn, but Baker kept moving. Wienke observed Baker drive the Saturn out of the lot with Medina "holding onto the car [with] his feet dragging in the driveway, and when [Baker] pulled out onto the street, [Medina] pick[ed] his feet up because they were, like, skidding on the ground." Baker drove down the street, turned onto another street, "like squealing his tires, like not trying to slow down, like peeled right out." Wienke followed the Saturn in another vehicle and when she turned on the street Baker had turned on, she saw Medina "kind of rolling" in the street. "[A]ll the traffic was stopped … because he was in the street." Wienke observed that Medina's legs were bleeding.

Wienke further testified that she and Medina returned to the lot and called 911. They also parked in front of the Ford F-150 so Jackson could not leave. Ten minutes later, Baker approached the lot on foot. Medina and another man stopped Baker at the sidewalk and Baker started walking away. Four or five minutes later, the police arrived at the lot.

Medina testified that when he arrived at the lot, he observe Wienke "running from the [Saturn], and she, like, actually had her hand on the car trying to push herself up to the left to get out of the path of the vehicle." The motor of the Saturn was "racing" and Baker appeared to be "chasing" Wienke across the lot. Wienke asked Medina "to stop the person in the car." Medina exited his vehicle, and when the Saturn drove past, he tried to open the driver's door of the car to "try[] to stop him, trying to determine what was going on at that time." Medina was concerned that he "didn't know who this person was, what his intentions were. Were they stealing the car? Were they going to go out in the road and harm somebody else? I was trying to stop him from doing that." Medina banged on the window and as he tried to open up the driver's door, his

fingers got jammed in the door handle. Medina testified that Baker continued driving and "kind of dragged me out into the street as I was sliding across the parking lot." Medina was telling Baker to stop the vehicle but Baker then accelerated to "probably 10, 15 miles an hour" before turning onto another street. Medina stated that he was "staring [Baker] straight in the eye telling him to stop the car," but Baker "just gave me a blank stare like he didn't care what was going to happen to me."

While Medina remained attached to the vehicle, Baker "made a lane change over into the left lane kind of abruptly, kind of swung over," and Medina thought Baker was "going to try to knock me off with another car" traveling in the opposite direction. Medina remained caught on the vehicle for more than a block as Baker drove it. Medina eventually was able to disconnect his hand from the vehicle, and he "tumbl[ed] down the road" hoping he would not get "run over by oncoming traffic." After Medina fell from the Saturn, Baker drove away. Medina testified that as a result of the incident, both of his knees "got cut up pretty good, tore my pants, my elbow, and a couple days later I had pain in my ribs and stuff like that." Photos of Medina's injuries and damage to his clothing were presented to the jury.

Medina testified that Baker returned on foot five to ten minutes later and Medina told him he could not step foot onto the property. Baker told Medina "not to touch him or he would sue." When Medina asked Baker why he did not stop the vehicle, Baker responded that he "didn't know who" Medina was. Baker made no inquiry as to whether Medina was injured or needed help, and during his own testimony, Baker admitted that it was not really important to him whether Medina was injured and he gave no regard to Medina's life or safety.

Medina further testified that, aware the police were on their way, he followed Baker as Baker walked back down the street away from the tow lot. When the police arrived, an officer told Baker and Medina to stay where they were while the officer turned around his vehicle, but Baker tried "to go across [a] field" and pulled away from Medina when Medina grabbed his coat to stop Baker from leaving. Baker eventually stopped upon the officer's prompting.

While several other witnesses testified for the State, and Baker and Jackson testified on behalf of Baker—providing a somewhat different version of the facts from Wienke and Medina—Wienke and Medina's testimony provided sufficient evidence to support the jury's finding that all three elements of first-degree recklessly endangering safety were proven by the State. The jury could reasonably conclude that Baker endangered Medina's safety and that his conduct in doing so was criminally reckless. According to Medina, when his fingers got caught in the door handle, rather than slowing down or stopping, Baker accelerated away, even turning onto another street, with Medina attached by his jammed fingers until he freed himself and rolled into the street with oncoming traffic. A reasonable jury could conclude that Baker's actions under the circumstances created an "unreasonable and substantial" risk of death or great bodily harm to Medina and that Baker was aware his conduct created such a risk.

A reasonable jury could also conclude Baker did all this under circumstances showing utter disregard for human life. Evidence indicated that when Wienke tried to stop Baker from leaving, Baker had no qualms about making contact against Wienke with the Saturn and even "chasing" her in the lot as she tried to get out of the way. When Medina's hand got caught in the door handle while Medina was trying to stop Baker from leaving with the Saturn, Baker did not slow down or stop, but sped up, turned a corner, and, as Medina testified, "made a lane change over into the left lane kind of abrubtly, kind of swung over," such that Medina thought Baker

was "going to try to knock me off with another car" traveling in the opposite direction. Medina testified that Baker looked Medina in the eyes as he was dragging Medina along and Medina was telling him to stop the car. Medina's interpretation of Baker's look was that Baker appeared "like he didn't care what was going to happen" to Medina. Once Medina disconnected himself and tumbled into the road, Baker did not stop to provide aid or inquire if Medina was alright, but instead drove away. With Jackson still at the lot, Baker returned five to ten minutes later. Medina testified that rather than inquire into Medina's condition, Baker told Medina not to touch him or he would sue. While this version of events is based upon the testimony of Wienke and Medina, the jury heard that version and was entitled to accept it as true. And on review, we "consider the evidence in the light most favorable to the State." ***Smith***, 342 Wis. 2d 710, ¶24.

Baker argues that Medina endangered his own safety by grabbing the door handle, adding that Medina "assumed th[e] risk" to his own life in doing so. Baker asserts that his natural interpretation of Medina's actions at the lot would be that Medina was attempting to open the door to "grab," "shove," or otherwise "forcibly physically attack[]" Baker. Baker points to his own testimony and that of Jackson, arguing that Medina "had been acting extremely aggressively and hostile" and "had threatened both" Baker and Jackson. On such points, Baker is merely rearguing the evidence to us as if we were the jury and should believe his and Jackson's testimony. We are not the jury. The jury was certainly entitled to doubt the truth of Baker and Jackson's testimony or to consider the elements of first-degree recklessly endangering safety to have been met despite such testimony, even if the jury believed some of it to be true. Our role is to consider whether there was sufficient evidence presented such that a reasonable jury could find Baker guilty of first-degree recklessly endangering safety. As detailed, there was plenty.

Baker also contends there was "no evidence" adduced at trial that he knew Medina's hand had become stuck in the door handle, stating that there was no testimony Medina ever yelled to Baker that his hand was stuck. We conclude that the evidence was sufficient that the jury could reasonably infer that Baker was aware something was greatly amiss with Medina's circumstance as Baker sped up and turned the corner, with Medina being dragged along the entire time. Medina testified that Baker looked him right in the eyes as Medina was dragged along the Saturn and Medina's interpretation of Baker's appearance was that Baker could not care less what happened to Medina.[2] The jury could reasonably infer Baker knew Medina was in significant danger due to Baker accelerating and turning the corner with the Saturn rather than stopping or slowing down. The evidence was sufficient to support the verdict.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* 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

[2] Baker made no objection to this testimony by Medina.