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DISTRICT II

January 2, 2020

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

2018AP2463-CR State of Wisconsin v. Julian M. Barler (L.C. #2017CF642)

Before Neubauer, C.J., Gundrum and Davis, 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).

Julian Barler appeals from his judgment of conviction, arguing that the evidence presented at his jury trial was insufficient to convict him of armed robbery as a party to the

crime.¹ 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).² We affirm.

Relevant Law

In reviewing a challenge to the sufficiency of the evidence to support a conviction, we

may not substitute our judgment for that of the trier of fact unless the evidence, viewed most favorably to the state 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. Therefore, if more than one reasonable inference can be drawn from the evidence, we must adopt the inference that supports the verdict.

State v. Mertes, 2008 WI App 179, ¶10, 315 Wis. 2d 756, 762 N.W.2d 813 (citation omitted).

A person may be convicted of a crime as a party to it if the person “[i]s a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it.” WIS. STAT. § 939.05(2)(c). “If a person is a member of a conspiracy to commit a crime and that crime is committed by any member of the conspiracy, then that person and all members of the conspiracy are guilty of the crime.” WIS JI—CRIMINAL 410.

A person is a member of a conspiracy if, with intent that a crime be committed, the person agrees with or joins with another for the purpose of committing that crime. A conspiracy is a mutual understanding to accomplish some common criminal objective or to work together for a common criminal purpose. It is not necessary that the conspirators had any express or formal

¹ In his brief-in-chief, Barler also contended the circuit court erred with regard to an instruction it gave the jury at the close of trial. Barler has withdrawn that challenge in light of our supreme court’s recent decision in *State v. Trammell*, 2019 WI 59, 387 Wis. 2d 156, 928 N.W.2d 564.

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

agreement, or that they had a meeting, or even that they all knew each other.

Id. (citations omitted).

As the circuit court instructed the jury in this case, armed robbery is committed

by one who, with the intent to steal and by the use or threat of use of a dangerous weapon, takes property from the person or presence of the owner by threatening the imminent use of force against the person of the owner with intent to compel the owner to submit to the taking and carrying away of the property.

WIS. STAT. § 943.32(1), (2).

Evidence Presented at Trial

In addition to other incriminating evidence presented at trial, April Reins, David Frye, and Michael Addison provided the following critical testimony. Reins testified that Barler had been staying at her apartment for about a month before the armed robbery. There was a gun in the apartment, and Reins had seen Barler with the gun on at least one prior occasion.

Frye testified that the day before the robbery he was at Reins' apartment with Reins, Addison, and Barler when Barler indicated he "needed some money" and wanted to set up a robbery. To accomplish this, Barler "set up a weed deal" the following morning. When the three victims came for the weed, Barler went outside, collected the money from them, and then came back to the apartment. He showed Frye the money he got from the victims. He informed Frye and Addison that he told the victims he would return with "weed," although he had none, and that he left his cell phone with the victims. Barler then told Frye and Addison where the victims were parked and the kind of vehicle they were in and instructed them "to go downstairs

and get the phone and to check to see if they have some more money ... to search the whole car.” Barler told them to “shake down the whole car.”

Frye further testified that he and Addison approached the vehicle, retrieved the phone from the victims, patted them down, and “took some money out of the center console” and a cup holder. Frye and Addison returned to the apartment where Barler “asked [them] what [they] had,” and they “gave it to [Barler].”

Addison testified that “everyone” knew where the gun in the apartment was, and when he and Frye left the apartment to retrieve Barler’s cell phone, Addison took the gun, which he believed to be loaded, because he and Barler “talked” and Barler believed the victims “might try to fight and argue.” Addison further testified that when he and Frye approached the victims, they were unwilling to give him the cell phone back, so he “flashed the firearm and just told them ... don’t make it harder than it needs to be” and then opened up the driver’s door. Frye located the cell phone, and Addison and Frye returned to the apartment. Shortly thereafter, Barler, Addison, and Frye drove to a gas station. When they got into the car, Barler asked Addison if Addison “show[ed] [the victims] the gun,” to which Addison responded, “yeah” and pulled the gun out from his waistband.

The victims also testified. C.P. testified that he and Barler arranged via text for C.P. to purchase marijuana from Barler for \$250. Barler told C.P. to come to the apartment building to make the purchase, which C.P. did, along with D.A. and T.J. Barler came out to the vehicle and then went back into the building with their money, leaving his cell phone as collateral until he returned with the marijuana, although he did not return. Instead, two other men [Frye and Addison] exited the building, approached the car, and told the victims to “empty [their] pockets.”

One of the men lifted his shirt and displayed a gun in his waistband; the other man went through the victims' pockets.

D.A. testified similarly to C.P. but added that when the one man displayed the gun, he had "his hand on the trigger" and said, "Don't make this harder than it has to be," and when the other man went through their pockets, he took money and threatened to "slap" him. T.J. also testified in similar fashion, adding that the man who went through their pockets was "just basically going through the car, just like grabbing, you know, anything that was laying around pretty much, our wallets, [our] money," including \$10 T.J. had placed in the center console.

Discussion

Barler does not dispute that Addison and Frye committed an armed robbery; in fact, he admits as much in his brief-in-chief. Barler insists, however, that the evidence was insufficient to convict him of this offense as a party to it. He asserts that Addison and Frye merely "assum[ed]" Barler was directing them to commit an armed robbery when Barler told them to "see if [the victims] have some more money."

Barler makes some curious assertions. He asserts that "even if it is fair to infer from [his] words that he was directing Frye and Addison to commit an armed robbery, this does not make Barler a member of a conspiracy to do so." He also states that he "merely indirectly suggested, or advised, that Frye and Addison rob the boys," adding that "[a]dvising another to commit a crime does not make one a party to that crime." As indicated, a person may be convicted of a crime as a party to it if the person "[i]s a party to a conspiracy with another to commit it *or* advises, hires, counsels *or otherwise procures another to commit it.*" WIS. STAT. § 939.05(2)(c) (emphasis added). Thus, Barler's apparent position that he could not be convicted of armed

robbery as a party to the crime if he “merely” directed or advised Frye and Addison to commit the robbery is incorrect.

On this record, the jury could reasonably have believed the evidence that there was a gun in the apartment and Barler knew of it; Barler wanted to get some quick money by setting up the phony drug deal and committing a robbery; after taking the victims’ \$250 and returning to the apartment, Barler told Frye and Addison to “go downstairs and get the phone” and “shake down” “the whole car” “to see if they have some more money”; Frye and Addison did exactly that; in doing so, Addison took the gun from the apartment, which he believed to be loaded, because he and Barler talked and Barler believed the victims “might try to fight and argue”; Addison displayed the weapon, with his finger on the trigger, to help ensure the victims did not resist as Frye rifled through the car, taking money he located; when Addison and Frye returned from the “shake down,” Barler “asked [them] what [they] had” and they “gave it to [Barler]”; the three shortly thereafter drove to the gas station and Barler asked Addison if Addison “show[ed] [the victims] the gun,” to which Addison responded, “yeah.”

There was sufficient evidence from which the jury could reasonably find both that Barler was a member of this conspiracy to commit armed robbery and that he advised or otherwise procured Addison and Frye to take money from the victims (intent to steal), which money was actually taken from the victims (takes the property from the person or presence of the owner), and Addison to use the gun or the threat of its use (use or threat of use of a dangerous weapon and threat of the imminent use of force) to thwart any resistance from the victims (compel the owner to submit to the taking and carrying away of the property). The evidence was sufficient to support Barler’s conviction on the charge of armed robbery as a party to the crime.

Therefore,

IT IS ORDERED that the judgment 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