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DISTRICT IV

September 10, 2020

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

2019AP1142-CR

State of Wisconsin v. Lisa M. Laverty (L.C. # 2018CF70)

Before Blanchard, Kloppenburg, and Nashold, 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).

Lisa M. Laverty appeals a judgment convicting her of operating a motor vehicle with a prohibited alcohol concentration, as a fifth or sixth offense. 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 Because the evidence was sufficient to support the jury's guilty verdict, we affirm.

The following facts are taken from the evidence at trial. Lavery needed a place to stay and showed up at the Richland Center home of a friend, Timothy Horner. Horner lived with his parents, and told Lavery she could not stay there. Horner agreed to drive Lavery to a homeless shelter in Madison. Once in the Madison area, Lavery "started throwing a fit" and said she wanted to return to Richland Center. Horner called his mother, Sherry, who, for employment reasons, lived in Madison during the week and in Richland Center on weekends. Horner told his mother he was scared to drive back to Richland Center with Lavery because she was "kind of paranoid and just kind of going off the wall." At Horner's request, Sherry agreed to drive back to Richland Center with Horner and Lavery. They left Madison at around 8:30 p.m.

The three arrived at Sherry and Horner's home in Richland Center. Lavery's car was parked in the driveway. Sherry's husband and sister-in-law arrived soon after. The group did not want Lavery's car to remain in the driveway and offered to park it on the street for her. Lavery asked that they move her car to the nearby Carriage House apartments. Sherry, Horner, and Lavery left the house in two vehicles. Horner drove Lavery's car while Sherry followed behind. Horner parked the car in the Carriage House parking lot and got into Sherry's vehicle. Sherry and Horner drove home. Lavery stayed behind at the Carriage House.

Cory Jongquist, a tenant in the Carriage House apartments, testified that he heard loud banging on another tenant's door at around 10:00 or 10:15 p.m. He saw that it was a woman and

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

asked her to leave. He headed outside with his stepsons to smoke a cigarette, and the woman followed behind. Jongquist recalled seeing the woman “stumbling around and just talking nonsense.” At the woman’s request, Jongquist gave her a cigarette. The woman told Jongquist that her name was “Lisa,” and that she dated and lived with a man in the apartment complex. While he was talking with the woman, Jongquist smelled alcohol.

While outside, Jongquist noticed an unfamiliar gray Intrepid in the parking lot. The woman said it was her car, and Jongquist asked her to move it because the parking lot was for tenants only. The woman agreed. Jongquist wrote the license plate number on his hand. He did not see anyone else with the woman.

Jongquist’s stepsons headed upstairs. Jongquist peeked around the corner and heard squealing tires. He saw the woman driving her car. No one else was inside the car. He ran upstairs and called 911 to report a drunk driver. The dispatch recording of Jongquist’s call was played for the jury. In the call, Jongquist provided a license plate number and indicated that he could see the car being parked nearby, on Main Street. Jongquist testified that he saw the woman exit the driver’s side door of the car.

Police Officer Elizabeth Deitelhoff was dispatched at 10:32 p.m., and located the car on Main Street. It was unoccupied. Deitelhoff saw Laverty walking away from a nearby residence, holding beer and cigarettes. Laverty told Deitelhoff she was “there knocking on a friend’s door asking to stay the night.” Laverty admitted she had been drinking, but said that she had not driven her car to the Main Street location. She said that she had been with Horner and that he parked her car there.

Sergeant Lauren Moe also responded to the scene, and Lavery repeated that Horner had parked her car on Main Street. When Moe asked why the car was parked in that location, Lavery said it was because there were kids at the Carriage House who were giving her a hard time. Moe called Horner's phone number, and his father answered. Moe testified that she asked Horner's father "if Timothy had parked Lisa's vehicle on Main Street, and he asked Timothy in the background if he had parked it on Main Street and Timothy said that he had not." After Lavery failed field sobriety testing, Sergeant Moe arrested her for drunk driving, and found Lavery's car keys tucked into the ankle of her shoe. Testing revealed Lavery's blood alcohol concentration to be .092 grams per 100 milliliters.

On appeal, Lavery argues that the evidence was insufficient to support the jury's guilty verdict, namely, its finding that Lavery, not Horner, drove the vehicle to its parked location on Main Street. On appeal, we will sustain a conviction "unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force 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). "If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it." *Id.* at 507.

We conclude that a reasonable juror could have found beyond a reasonable doubt that Lavery had recently driven her vehicle out of the Carriage House parking lot to the Main Street location where officers found it parked and unoccupied. Horner and Sherry testified that Horner parked Lavery's car in the Carriage House lot and did not move it from that location. Sherry

confirmed that, once she and Horner returned home, Horner was never out of her sight line. Jongquist testified that he saw Lavery drive her car out of the Carriage House lot, park it on Main Street, and exit the driver's side. Neither Jongquist nor responding officers saw Horner that evening, and the car keys were found in Lavery's shoe. This evidence is more than sufficient to sustain Lavery's conviction.

Lavery characterizes Jongquist's testimony as the only evidence that could support the jury's finding that "Ms. Lavery was driving," and asserts that the "inconsistencies of Mr. Jongquist's testimony create a scenario in which no rational juror could believe Mr. Jongquist." We are not persuaded. Jongquist's testimony was not the only inculpatory evidence at trial. His observations were corroborated by the testimony of Horner, Sherry, and both responding officers. The standard of review is the same whether the evidence presented at trial is direct or circumstantial. *Id.* at 503. As to the purported inconsistencies, Lavery confuses consistency with completeness. Jongquist's statements on the 911 recording are perfectly consistent with his trial testimony, even if he added detail at trial. Additionally, it is the jury's function to decide the credibility of witnesses and to reconcile any inconsistencies in the testimony. *See State v. Toy*, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985); *see also Haskins v. State*, 97 Wis. 2d 408, 425, 294 N.W.2d 25 (1980) (inconsistencies and contradictions in a witness's statement do not render the testimony inherently or patently incredible, but simply create a question of credibility for the trier of fact to resolve).

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