OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

March 31, 2021

To:

Hon. Peter L. Grimm
Circuit Court Judge
Fond du Lac County Courthouse
160 S. Macy St.
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 S. Macy St.
Fond du Lac, WI 54935

Christine A. Remington
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Eric Toney
District Attorney
Fond du Lac County
160 S. Macy St.
Fond du Lac, WI 54935

Michelle L. Velasquez
Civitas Law Group
2618 W. Greenfield Ave.
Milwaukee, WI 53204

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

2019AP1250-CR State of Wisconsin v. Juan Antonio Arriaga (L.C. #2016CF599)

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).

Juan Antonio Arriaga appeals from a judgment of conviction for three felonies and two misdemeanors. Arriaga argues that there was insufficient evidence to support the jury's guilty verdicts for misdemeanor battery, attempted kidnapping, and intimidation of a victim by use or attempted use of force. 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 (2019-20).[1] We summarily affirm.

Arriaga's five convictions stem from a single incident involving a woman he did not know. The woman, J.D., testified at trial that she was walking home alone from a bar at approximately midnight. As she walked, she spoke with a friend on her cell phone. She saw a man across the street at a gas station who crossed the street toward J.D. and walked past her, heading in the opposite direction. The same man, who was later identified as Arriaga, then walked back in J.D.'s direction and passed her, and she "lost sight of him."

After J.D. ended her phone call, she heard someone running behind her. Arriaga approached J.D. from behind and put his arms around her head, blocking her vision. J.D. testified: "I turned my body to start to push away and say this is enough because I thought it was my boyfriend at the time, and then after I started to push away, he hit me in the head…. I felt his knuckles and his punch in my head." J.D. said she "saw a little bit of white dots for a second," but she denied experiencing pain. J.D. said she fell to the ground because she "didn't know how to get away" and "figured falling to the ground would help." She said that as she fell, the scarf around her neck that Arriaga was holding "came up, causing [her] earrings to fall out."

J.D. said that she remained on the ground, trying to find her earrings. She testified: "[Arriaga was s]tanding in front of me with his hands in front of me trying to get me to come up." At first Arriaga raised his palm, implying he wanted her to stand. J.D. said that when she failed to stand, Arriaga used his hand to simulate a gun and "was putting it to my head … [and]

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

making the motion like he was shooting me." J.D. stood up because she "was scared" and thought that Arriaga "had a gun and was going to kill" her.

J.D. said that Arriaga had her wristlet purse in his hand and started to "take [her] back towards the way [she] was coming from" by holding on to her. They walked the distance of "[a] few sidewalk squares" and then J.D. saw a police car. She testified:

> As I saw the police car pull up to the stop sign, we were holding hands, and he saw it and said shhhh….
>
> ….
>
> After a few seconds I thought about it, and then I said I'm not going to stay quiet, so I grabbed my stuff and yelled for help and started running towards the cop.

The officer, Robert Williams, testified that while he was patrolling the area in his vehicle, he saw Arriaga walking five to ten feet behind J.D. Williams said that Arriaga turned and looked at Williams and "then cross[ed] the street and start[ed] to run." Williams was "a little suspicious of why he was running," so Williams drove a couple of blocks and then returned to the area. He saw that Arriaga had his arm around J.D.'s head. As Williams drove past the two of them, he saw J.D. fall to the ground. Williams drove back around the block and again observed Arriaga and J.D. Williams testified:

> [M]y observation was that [Arriaga's] left arm was holding onto [J.D.'s] right arm, and he had a hold of [J.D.'s] wristlet or purse in his right arm and appeared as he was leading her in the direction of myself, which would have been … the opposite direction that I originally saw [J.D.] walking.
>
> ….
>
> I observed them walk probably a few feet before I saw [J.D.] yank herself away from [Arriaga] and yank her purse away from him and then run at my patrol vehicle.

Williams said that J.D. "was screaming, crying" and that she yelled, "Help me, he just attacked me and knocked me down." When Arriaga ran away, the officer told J.D. to stay where she was. The officer pursued Arriaga and found him hiding against the wall of a church.

At issue on appeal is whether there was sufficient evidence to support the jury's guilty verdicts for three crimes. 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. The standard of review is the same whether the conviction relies upon direct or circumstantial evidence. ***State v. Poellinger***, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990). 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." ***Id.*** at 501. "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.

First, Arriaga challenges his conviction for battery. The State was required to prove that Arriaga caused bodily harm to J.D., which includes "physical pain or injury, illness, or any impairment of physical condition." *See* WIS JI—CRIMINAL 1220 (April 2015). Arriaga argues that because J.D. testified that she did not feel pain when Arriaga punched her in the head and because the punch was not the reason she fell to the ground, this element was not satisfied. Arriaga acknowledges J.D.'s testimony "that she saw 'white dots' for a second," but he reiterates that she did not feel pain. He also argues, without citation to authority, that although J.D.

testified that she had redness on her neck from where her scarf came off,[2] "[s]light discoloration of the skin is not an injury, or an impairment of physical condition."

We reject Arriaga's challenge to the battery conviction. J.D.'s testimony that she saw "white dots" after being struck in the head was sufficient to support a jury finding that her physical condition was impaired. In the alternative, the jury could have found that the redness on J.D.'s neck caused by her scarf being pulled was an injury or impairment of her physical condition. As for Arriaga's argument that any injury to J.D.'s neck resulted from her decision to fall to the ground, we agree with the State: "It is not important to the bodily harm determination whether Arriaga's punch sent J.D. to the ground or whether she used it as a defensive maneuver to avoid being punched again. Instead, the important question is whether J.D. was injured or impaired by Arriaga's actions."

Next, J.D. challenges his conviction for attempted kidnapping. "Kidnapping … is committed by one who, by force or threat of imminent force, seizes or confines another person without consent and with intent to cause [that person] to be secretly confined or imprisoned or to be carried out of this state or to be held to service against [that person's] will." *See* WIS JI—CRIMINAL 1281 (June 2016); *see also* WIS. STAT. § 940.31(1)(b). Because Arriaga was charged with attempted kidnapping, the State had to prove that he did "acts toward the commission of that crime which demonstrate unequivocally, under all of the circumstances, that he … had formed that intent and would commit the crime except for the intervention of another person or

[2] The State introduced a photograph of J.D. that was taken by the police on the same day as the incident; it showed redness on J.D.'s neck.

some other extraneous factor." *See* WIS JI—CRIMINAL 580 (April 2013); *see also* WIS. STAT. § 939.32.

Arriaga concedes that he confined J.D. forcibly and without her consent, but he argues that "no reasonable jury could conclude" that his actions "'unequivocally' show[ed] that he intended to secretly confine J.D." He notes that "[t]he entire encounter, which lasted under 30 seconds, took place on about the same spot on Main Street" and that Arriaga and J.D. took only a few steps together. We are not persuaded. The jury heard evidence that Arriaga followed J.D., struck her, used a hand gesture to suggest he would shoot her, made her stand up, forcibly took her hand, and led her in the opposite direction than she had been walking. From this evidence, the jury could conclude that Arriaga intended to secretly confine J.D. and would have done so but for J.D. seeing the police car and breaking away from Arriaga to seek help.

Finally, Arriaga challenges his conviction for felony intimidation of a victim. The jury was instructed that the State had to prove that J.D. was the victim of a battery, that Arriaga "knowingly and maliciously" attempted to dissuade J.D. from reporting the victimization to a law enforcement agent, and that Arriaga's act was "accompanied by any express or implied threat of" J.D. *See* WIS JI—CRIMINAL 1296 (July 2020); WIS. STAT. § 940.45(3). The phrase "knowingly and maliciously" includes acting "with the intent to injure or annoy another" or "with an intent to interfere with the orderly administration of justice." *See* WIS JI—CRIMINAL 1296.

Arriaga argues that he could not be found guilty because he did not commit battery, but we have already rejected his challenge to his battery conviction. Arriaga also argues that there was no intimidation by threat of force. He explains: "J.D. testified that when the police were in

sight, all Mr. Arriaga said was 'shhhh.' He did not threaten her, or make any gestures as if to indicate he would harm her." We are not convinced. The jury could find that Arriaga used threat of force to dissuade J.D. from seeking assistance from the approaching officer when he said "shhhh," continued to hold her hand, led her down the sidewalk, and had, seconds before, mimicked shooting her with a gun. We agree with the State: "While some of Arriaga's actions took place before Arriaga and J.D. observed the police car, these are important facts to determine J.D.'s state of mind when Arriaga made the shushing noise. She was already afraid and convinced that Arriaga had a real gun." The evidence was sufficient for the jury to find that Arriaga intimidated J.D. by express or implied threat of force. *See* ***id.***

For the foregoing reasons, we conclude that there was sufficient evidence to support each of the three challenged convictions. Therefore, we summarily affirm the judgment.

IT IS ORDERED that the judgment is summarily affirmed.

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

Sheila T. Reiff
Clerk of Court of Appeals