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DISTRICT I

August 9, 2022

To:

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Circuit Court Judge
Electronic Notice

Sarah Burgundy
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George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
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John D. Flynn
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Esther Cohen Lee
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1504-CR

State of Wisconsin v. Devonte Dawayne Evans
(L.C. # 2017CF1213)

Before Brash, C.J., Donald, P.J., and Dugan, 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).

Devonte Dawayne Evans appeals a judgment of conviction entered after a jury found him guilty of armed robbery as a party to a crime and fleeing or eluding an officer. He also appeals an order denying his postconviction motion. The only issue on appeal is whether there was sufficient evidence to support Evans' conviction for armed robbery as a party to the crime. 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(1) (2019-20).¹ We affirm.

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

When a defendant challenges the sufficiency of the evidence, we will not reverse a conviction “unless the evidence, viewed most favorably to the [S]tate 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), *holding reaffirmed by State v. Smith*, 2012 WI 91, ¶¶30-33, 342 Wis. 2d 710, 817 N.W.2d 410. Therefore, we will uphold the conviction if, in our *de novo* review, we determine there is any reasonable hypothesis that supports it. *Smith*, 342 Wis. 2d 710, ¶24.

To convict Evans of armed robbery, the State was required to show: (1) the victim in this matter owned property, (2) the defendant took and carried away the property with the intent to steal, (3) the defendant acted forcibly, and (4) at the time of the taking and carrying away of the property, the defendant used or threatened to use a dangerous weapon. *See* WIS JI–CRIMINAL 1480. Additionally, because Evans was charged as a party to the crime, the jury could find guilt if it found that he either directly committed the armed robbery or intentionally aided and abetted the person who directly committed it. *See* WIS JI–CRIMINAL 400.

The charges against Evans stemmed from a late night incident where a high school student was robbed while he was walking home. The victim testified that a man with a gun robbed him of his backpack, wallet, and cell phone, while another man stood behind him. Following the robbery, the victim said that the men then drove off.

Trial testimony revealed that within approximately twelve minutes of the victim calling 911 following the armed robbery, a police officer saw a vehicle similar to the victim’s description of the robbers’ vehicle in the same neighborhood as the robbery. After the officer

attempted to stop the SUV, the SUV driver led police on a car chase that ended with the SUV rolling over. The officer subsequently saw Evans climb out of the SUV from the driver's side window and run, leading police on a foot chase. An officer caught, detained, and arrested Evans and then found the victim's cell phone in Evans's pocket.

Evans argues that the evidence of his involvement in the armed robbery was circumstantial and insufficient to support his conviction. He highlights the evidence that was *not* presented at trial. For instance, the victim's inability to identify Evans as one of the robbers; the fact that the officers did not recover the victim's backpack or wallet; and the fact that the police did not find a firearm on the defendant or at the scene.

While Evans hones in on the specific evidence the State lacked, our task is to determine whether the evidence that was presented was sufficient to sustain the conviction. *See Poellinger*, 153 Wis. 2d at 507. The weight to be given to the evidence is a determination for the trier of fact. *Id.* at 506. "Circumstantial evidence is evidence from which a jury may logically find other facts according to common knowledge and experience." WIS JI-CRIMINAL 170. "A conviction may be supported solely by circumstantial evidence[.]" *State v. Mertes*, 2008 WI App 179, ¶11, 315 Wis. 2d 756, 762 N.W.2d 813.

Here, we are satisfied that the evidence was sufficient to sustain Evans' conviction for armed robbery as a party to a crime. The jury was presented with cell phone evidence directly linking Evans to the crime and significant circumstantial evidence supporting the inference that Evans was one of the armed robbers.

Therefore,

IT IS ORDERED that the judgment and order are 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