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DISTRICT III

February 7, 2023

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

2021AP973-CR

State of Wisconsin v. Timothy Clark (L. C. No. 2020CF39)

Before Hruz, J.¹

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).

Timothy Clark appeals from a judgment convicting him of taking and driving a vehicle without the owner's consent. Clark contends that the evidence introduced at his jury trial was insufficient to support his conviction. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Whether the evidence was sufficient to sustain a guilty verdict in a criminal prosecution is a question of law that we review independently. *State v. Smith*, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. A defendant “bears a heavy burden in attempting to convince a reviewing court to set aside a jury’s verdict on insufficiency of the evidence grounds.” *State v. Booker*, 2006 WI 79, ¶22, 292 Wis. 2d 43, 717 N.W.2d 676. When reviewing the sufficiency of the evidence to support a conviction, an appellate court “may not substitute its 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.” *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

It is the function of the jury, not this court, to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Id.* at 506. “Thus, when faced with a record of historical facts which supports more than one inference, an appellate court must accept and follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law.” *Id.* at 506-07. Ultimately, if any possibility exists that the jury could have drawn the appropriate inferences from the evidence adduced at trial to find the defendant guilty, then we may not overturn the jury’s verdict, even if we believe the jury should not have found guilt based on the evidence before it. *Id.* at 507. The standard for reviewing the sufficiency of the evidence is the same regardless of whether the evidence against the defendant is direct or circumstantial. *Id.* at 501.

To convict Clark of taking and driving a vehicle without the owner’s consent, the State needed to prove three elements beyond a reasonable doubt: (1) that Clark intentionally took a vehicle without the owner’s consent; (2) that Clark intentionally drove the vehicle without the

owner's consent; and (3) that Clark knew that the vehicle's owner did not consent to Clark taking and driving the vehicle. *See* WIS JI—CRIMINAL 1464 (2019). The evidence introduced at Clark's trial was sufficient for the jury to find that the State had proved each of these elements beyond a reasonable doubt.

The victim testified at trial that he was driving home from work at around 11:30 p.m. on February 1, 2020, when he observed a vehicle crashed deep into the ditch on the west side of U.S. Highway 48. He did not see anyone near the vehicle, so he continued on his way home. After turning onto another road, he saw a man—who was later identified as Clark—walking on the side of the road about 100 yards from the victim's driveway. The victim stopped to ask if Clark was alright. Clark responded that he was fine, but his vehicle was in a ditch and he was looking for a truck to pull it out. The victim replied that he was unable to help Clark. The victim testified that Clark was the only person he saw on the road near his home that night.

After speaking with Clark, the victim continued home, where he parked his truck and went inside to get ready for bed. No more than ten minutes after he spoke to Clark, the victim heard his truck start up. The victim looked out his bedroom window and saw that his truck had been backed into a snowbank and appeared to be stuck there. He went outside to investigate, but the person who had driven his truck was no longer there.

The victim then drove his wife's vehicle back to the place where he had seen Clark's vehicle in the ditch. He found Clark at that location, and Clark denied taking the victim's truck. Clark told the victim that he had walked to a bar to ask for help, and one of the bar patrons had agreed to come and pull his vehicle out of the ditch. The victim drove to the bar to verify this

information. The bartender told the victim that there were only two customers in the bar when Clark arrived and that they had both refused to help Clark.

The victim then returned to the location of Clark's vehicle, and shortly thereafter, Barron County Sheriff's Deputy Anthony Weigand arrived on the scene. The victim told Weigand that someone had attempted to remove his truck from his driveway. Clark, in turn, told Weigand that after his vehicle went into the ditch, he went to a bar to ask for help and some of the patrons said that they would help him, but they never arrived. Clark denied entering the victim's property and attempting to take the victim's truck.

Weigand took photographs of the soles of Clark's boots to compare with any boot prints that he might later find at the victim's residence. He noticed a distinctive pattern on the soles of Clark's boots, consisting of an "X" on the heel and "two half circles that came together in the middle of the sole." Weigand then proceeded to the victim's residence and observed that the victim's truck "appeared to have traveled off the plowed portion of the driveway into the deep snow." Weigand also observed fresh boot prints in the snow on the victim's property, including "a set of foot tracks in the deep snow that appeared to have exited the driver's side of the [victim's] truck and traveled southbound in order to get back onto the plowed portion of the driveway." Weigand testified that these boot prints "matched identically" to the tread pattern on the soles of Clark's boots. Photographs of the soles of Clark's boots were introduced into evidence at trial, along with photographs of the boot prints that Weigand observed on the victim's property. Weigand testified that he examined the boots that the victim was wearing on the night in question and confirmed that they did not match the distinctive boot prints that he observed on the victim's property. Weigand also testified that his own boots did not match those boot prints.

Weigand testified that after comparing Clark's boots with the boot prints that he had observed on the victim's property, he concluded that Clark had been on the victim's property and had attempted to remove the victim's truck from that property. The victim testified that he never gave Clark permission to take or move his truck.

This evidence—while circumstantial—was more than sufficient to support the jury's guilty verdict. See *Poellinger*, 153 Wis. 2d at 501 (“It is well established that a finding of guilt may rest upon evidence that is entirely circumstantial and that circumstantial evidence is oftentimes stronger and more satisfactory than direct evidence.”). In particular, the evidence showed that the victim had contact with Clark shortly before the offense at a location only about 100 yards away from the victim's driveway. The victim did not see anyone other than Clark on the road near his home that night. The evidence also established that Clark was without an operable vehicle and was seeking assistance to get his vehicle out of the ditch, which provided a plausible motive for Clark to take and drive the victim's truck. In addition, the State introduced evidence showing that boot prints on the victim's property—including prints leading away from the driver's side of the victim's truck—matched the distinctive tread pattern found on the soles of Clark's boots.

Based on this evidence, the jury could reasonably infer that Clark was the person who took and drove the victim's truck on the night in question. Furthermore, the victim expressly testified that he did not give Clark permission to do so. In light of that testimony, the jury could reasonably find that Clark did not have the victim's consent to take and drive the vehicle. The jury could also reasonably infer that Clark knew he did not have the victim's consent. The evidence was therefore sufficient to support the jury's determination that the State had proved all

three elements of the charged offense beyond a reasonable doubt. *See* WIS JI—CRIMINAL 1464 (2019).

Although Clark testified in his own defense and denied going to the victim’s residence on the night in question, the jury was not required to accept Clark’s testimony in that regard. “It is exclusively within the trier of fact’s province to decide which evidence is worthy of belief, which is not, and to resolve any conflicts in the evidence.” *State v. Below*, 2011 WI App 64, ¶4, 333 Wis. 2d 690, 799 N.W.2d 95.

Clark also highlights minor discrepancies between Weigand’s measurements of Clark’s boots on the night of the crime, Clark’s and Weigand’s measurements of the boots during trial, and Weigand’s measurements of the boot prints from the victim’s property. Clark conceded at trial, however, that he did not know how Weigand held the tape measure when he measured Clark’s boots. Weigand similarly testified that he did not know how Clark held the tape measure when measuring the boots and did not know whether Clark was “bending [the tape measure] in any way or anything like that.” Given this evidence, the jury could reasonably infer that the minor discrepancies between the various measurements were the result of the witnesses’ inconsistent measuring practices. These minor discrepancies did not prevent the jury from drawing a reasonable inference that Clark’s boots made the distinctive boot prints that Weigand photographed on the victim’s property.

Ultimately, Clark’s arguments on appeal ignore our standard of review. Accepting Clark’s arguments would require us to reject the jury’s reasonable inferences from the evidence, which we may not do. *See Poellinger*, 153 Wis. 2d at 507. While Clark’s arguments would have been suitable for a closing argument at trial—and while Clark’s trial attorney did raise

substantially similar arguments in closing—they do not provide any basis for this court to conclude that the evidence was insufficient to support the jury’s verdict.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. 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