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**DISTRICT I**

June 20, 2023

To:

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Electronic Notice

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Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Angela Conrad Kachelski  
Electronic Notice

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

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2022AP444-CR

State of Wisconsin v. Jerry L. Miller (L.C. # 2018CF5571)

Before Brash, C.J., Dugan and White, 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).**

Jerry L. Miller appeals from that portion of a judgment convicting him of kidnapping L.A.M. as a party to a 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 (2021-22).<sup>1</sup> The judgment is summarily affirmed.

In late 2018, Milwaukee police received multiple sexual assault complaints from different women, all following a similar fact pattern. Each woman met a male subject online through an

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

app called Tagged and eventually agreed to meet him in person. The man would arrive at the meeting spot and ask the woman to get into his vehicle. Once the woman was in the front seat, a second man in the back seat would pull her to the back of the vehicle and blindfold her. The woman was then taken to an apartment where she would be sexually assaulted by multiple men.

The police eventually identified three suspects in the cases: Miller, Durrell Harris, and Davoncia McAfee. Miller was charged with the kidnapping and first-degree sexual assault, as a party to a crime, of A.H. and of L.A.M. Harris and McAfee were also charged with these four offenses, as well as crimes involving several other victims.<sup>2</sup>

Miller and Harris had a joint trial. McAfee pled guilty to three sexual assault charges and testified against Miller and Harris. Miller was convicted of both kidnappings and of sexually assaulting L.A.M., but acquitted of sexually assaulting A.H. The trial court imposed concurrent sentences totaling twenty-eight years' imprisonment. On appeal, Miller challenges only his conviction for kidnapping L.A.M., arguing, "there was no direct evidence of [his] involvement in this kidnapping charge and there was no circumstantial evidence that he was involved."

"When a defendant challenges a verdict based on sufficiency of the evidence, we give deference to the jury's determination and view the evidence in the light most favorable to the State." *State v. Long*, 2009 WI 36, ¶19, 317 Wis. 2d 92, 765 N.W.2d 557. Whether the evidence is direct or circumstantial, this court "may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the [S]tate and the conviction, is so

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<sup>2</sup> McAfee was additionally charged with the first-degree sexual assault and kidnapping of M.L.W. Harris was additionally charged with the first-degree sexual assaults and kidnappings of M.L.W., M.A., and E.J.J., as well as the attempted first-degree sexual assault, kidnapping, and robbery of victim S.M.K. All charges against Harris and McAfee included the party to a crime modifier.

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, 501, 507, 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.

Because we consider the evidence in a light most favorable to the jury’s determination, we “search the record for credible evidence that sustains the jury’s verdict, not for evidence to support a verdict that the jury could have reached but did not.” See *Morden v. Continental AG*, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. Below, we set forth the evidence that supports the jury’s verdict.

L.A.M. testified at trial that she met someone named “Vonn” on Tagged; Vonn was later identified as McAfee. They decided to meet, and McAfee arrived at her house driving an SUV. When she reached the SUV, she saw only one occupant, the driver, who matched McAfee’s profile picture from Tagged. When L.A.M. got into the front passenger seat, she told McAfee she needed to stop at the gas station to buy cigars. McAfee drove in the direction of the station but as they approached, he began to speed up rather than slow down. When they passed the gas station, L.A.M. told McAfee to let her out, but he ignored her. At that time, L.A.M. believed she was being kidnapped and she tried to jump from the moving vehicle. Before she could jump, a second man hiding in the back seat grabbed her and put a knife to her neck. L.A.M. struggled, so the man, later identified as Harris, put the knife away and pulled out a gun. L.A.M. stopped fighting. She was pulled into the back seat and pinned to the floor.

A short time later, McAfee stopped the car. L.A.M. was blindfolded, and the two men began physically assaulting her. McAfee then continued driving and the man in the back seat made a phone call stating, “Yeah, I got her. I got her. I got her.” The man from the back seat forced his penis into L.A.M.’s mouth. Although she could not see his face, she could see if she looked down, and she could see a tattoo across the man’s stomach that said “blessed.”

Approximately ten minutes later, the SUV stopped. L.A.M. was pulled from the vehicle and led to a room. She was pushed onto her hands and knees and forced to perform fellatio on one of the men, while the other penetrated her vagina with his penis. A short time later, L.A.M. heard a third person enter the apartment and say, “Oh, y’all got her? Yeah, she kind of nice.” After McAfee and the other man were finished, the third male began sexually assaulting L.A.M. At one point, L.A.M. asked to use the bathroom. McAfee escorted her and waited for her to finish, then took her back to the room with the others, where the men continued to sexually assault her. L.A.M. testified that there could have been as many as six or seven men in the room.

About three hours later, L.A.M. was dressed, taken to the SUV, driven around for about ten minutes, then dropped off. She contacted the police. A few days later, L.A.M. identified McAfee from a photo array as the driver of the SUV; she could not identify her other two assailants. A photo taken of Harris at the time of his arrest shows him bare-chested, with a tattoo across his stomach that says “blessed.” A semen stain was found on the pants L.A.M. wore the day of the assault ; forensic analysis determined the semen was from Miller.

There are four elements to the crime of kidnapping under WIS. STAT. § 940.31(1)(a) (2017-18): that the defendant transported the victim: 1) from one place to another; 2) without the victim’s consent; 3) forcibly, i.e., used force or threatened the use of imminent force to

overcome or to prevent the victim's resistance to being transported; and 4) with intent that the victim be secretly confined or imprisoned. *See* WIS JI—CRIMINAL 1280 (2016). L.A.M.'s testimony that she entered McAfee's vehicle, that he refused to let her out when she requested, that she attempted to exit the vehicle, but was pulled back to prevent escape, that a knife and gun were brandished to subdue her, and that she was blindfolded when transported between the vehicle and the apartment is sufficient evidence to establish she was kidnapped.

As noted, Miller argues there is no evidence that he was "present or involved" in the kidnapping of L.A.M.; the only identifications L.A.M. made were of McAfee as the driver and Harris as the man with the "blessed" tattoo from the back seat. However, Miller was charged as a party to a crime. WISCONSIN STAT. § 939.05(2)(a)-(b) provides that a person is a party to a crime if he directly commits the crime or intentionally aids and abets the person who directly committed the crime.

A person aids and abets the commission of a crime when, acting with knowledge or belief that another person is committing or intends to commit a crime, [he] knowingly either: [1] assists the person who commits the crime; or [2] is ready and willing to assist and the person who commits the crime knows of the willingness to assist.

*See* WIS JI—CRIMINAL 400 (2005).

McAfee testified that Harris is his friend, and Miller is Harris's uncle. In September 2018, McAfee overheard Miller and Harris talking about having sex with the same girl the night before. McAfee expressed interest in joining them in "having sex with more females." Harris told McAfee that he would let him know when he "had another girl." A few days later, McAfee was at Harris's apartment when Harris told him that he and Miller were "gonna go get" another girl. Harris and Miller got into a vehicle; McAfee followed in a separate vehicle. Harris and

Miller picked up a woman, and took her back to Harris's apartment, where all three sexually assaulted her.

McAfee further testified that after that initial incident, the three men conceived of a plan for the three of them to sexually assault additional girls. The plan involved McAfee driving Harris's SUV to pick up the girls and either Miller or Harris, but usually Miller, would hide in the back. After the girl was picked up, McAfee would turn up the music so the girl could not hear the person hiding in the back. The person hiding in the back would then grab the girl from behind, take her cell phone, pull her into the backseat, and blindfold her. McAfee would then drive to either Harris or Miller's apartment, where all three men would sexually assault the girls. McAfee also said that he was involved in five "abductions and sexual assaults" with Harris and Miller pursuant to their newly-formed plan and that L.A.M. was one of those five.

McAfee's testimony is sufficient to establish Miller's role in the kidnapping of L.A.M. as a party to a crime. It establishes Miller knew there was a plan with McAfee and Harris to kidnap and sexually assault women, that Miller was ready and willing to assist McAfee and Harris with the kidnappings, and that McAfee and Harris knew Miller was ready and willing to assist them.

Based on the foregoing, we conclude that sufficient evidence supports the jury's verdict.

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.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*