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DISTRICT I

September 12, 2023

To:

Hon. T. Christopher Dee
Circuit Court Judge
Electronic Notice

Nicholas DeSantis
Electronic Notice

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

Jeffrey W. Jensen
Electronic Notice

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

2021AP183-CR

State of Wisconsin v. Daveon D. Banister (L.C. # 2018CF4648)

Before White, 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).

Daveon D. Banister appeals from his judgment of conviction, entered upon a jury's verdict, for first-degree reckless injury using a dangerous weapon as a party to a crime, first-degree recklessly endangering safety, and fleeing an officer, all with habitual criminality repeater enhancers. Banister argues that the evidence is insufficient to support his conviction for the first-degree reckless injury charge. 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) (2021-22).¹ We summarily affirm.

The charges against Banister stem from the shooting of Roger² outside of a convenience store on West Silver Spring Drive in Milwaukee in September 2018. According to the criminal complaint, an officer from the Milwaukee Police Department was on patrol in the vicinity and heard what he believed were gunshots. He also observed a red Chevrolet Avalanche fleeing from the area, striking several vehicles as it fled. The officer broadcasted a description of the vehicle, including its license plate number, over the radio.

Two other officers in a marked squad car saw the Avalanche traveling at a high rate of speed moments after hearing the radio dispatch. They activated the squad's lights and sirens and attempted a traffic stop of the Avalanche. However, the Avalanche sped away, reaching speeds of eighty to ninety miles-per-hour on Teutonia Avenue. Eventually, the Avalanche moved into the lane for oncoming traffic to avoid traffic that was stopped for a red light at the intersection of Teutonia Avenue and Hampton Avenue. The Avalanche was struck by a vehicle traveling on Hampton through the intersection with the green light. Banister and Xavier Brown, along with a third occupant, were removed from the Avalanche.

A police detective investigating the shooting obtained surveillance video from the convenience store. The video showed Roger arriving at the convenience store and going inside. The video further showed that the Avalanche had arrived at the store prior to Roger, and that

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

² The parties use the pseudonym "Roger" for the shooting victim, pursuant to WIS. STAT. RULE 809.86; we follow suit.

Banister had gotten out of the Avalanche and moved out of view. After Roger arrived, Banister returned to the Avalanche, got into the driver's seat and moved the vehicle, positioning it behind Roger's vehicle. When Roger returned to his car, the video showed the front passenger window of the Avalanche being rolled down and a weapon being extended, and muzzle flashes are seen. The video then showed the Avalanche driving out of the parking lot and going the wrong way on a divided street.

Another detective took a statement from Roger, who had been shot in the chest, suffering two broken ribs, bruised lungs, and a broken backbone. Roger said that he did not know the man who shot him. However, upon being shown a picture of Banister, Roger said that he knew Banister, and admitted that he had a gun that belonged to Banister, and that Banister's father had called him, seeking its return.

Four .380 caliber bullet casings were recovered from the parking lot of the convenience store. A .380 firearm was recovered from the passenger side of the Avalanche, and a .380 magazine clip was found in Brown's pocket.

Both Banister and Brown were charged in the incident, and they were tried together in April 2019. Witnesses for the State included Roger, who explained the "beef" between him and Banister over a gun, stating he had known Banister for years. Roger further testified that he did not know Brown, and knew of no reason that Brown would want to shoot him.

Also testifying for the State was the detective who reviewed the surveillance video from the convenience store, which was played for the jury. Additionally, one of the officers involved in the pursuit of the Avalanche testified regarding the crash, and described the firearm and

magazine recovered from the vehicle and Brown. A firearms examiner testified that the casings found at the scene of the shooting matched the gun found in the Avalanche.

The jury convicted Banister on all charges. He was sentenced to a total of seventeen years of initial confinement to be followed by eight years of extended supervision. Banister appeals.

Banister argues that the evidence is not sufficient to sustain the conviction for first-degree reckless injury because it does not demonstrate that he was aware of Brown's intention to shoot Roger. "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. This court 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). Furthermore, in our review we must "accept and follow" any inference drawn by the jury "unless the evidence on which that inference is based is incredible as a matter of law." *Id.* at 507. In other words, as long as "any possibility exists" that the jury could have drawn "appropriate inferences" from the evidence presented at trial, we may not overturn the verdict. *Id.*

We conclude that the evidence presented by the State was sufficient to allow for the inferences drawn by the jury in convicting Banister of first-degree reckless injury. The elements of first-degree reckless injury are (1) the defendant caused great bodily harm (2) by criminally reckless conduct (3) which showed an utter disregard for human life. *See* WIS. STAT. § 940.23(1)

(2017-18); WIS JI—CRIMINAL 1250. Additionally, as Banister was charged as a party to a crime, the State had to prove that he intentionally aided and abetted Brown in the shooting of Roger. *See* WIS. STAT. § 939.05 (2017-18); WIS JI—CRIMINAL 400.

In order to establish intentional aiding and abetting, the defendant “must know that another person is committing or intends to commit the crime” that is charged. *See* WIS JI—CRIMINAL 400. Banister asserts that he was only going to confront Roger regarding the gun that belonged to Banister, and did not know Brown was going to shoot him. However, Banister’s assertion does not negate the reasonableness of the inference apparently drawn by the jury that Banister knew Brown was going to shoot at Roger, based on the evidence presented at trial. *See Poellinger*, 153 Wis. 2d at 507. Given the surveillance video showing Banister repositioning the Avalanche behind Roger’s vehicle in the convenience store parking lot after seeing Roger enter the store—a maneuver that would not be required for a simple confrontation—the jury could reasonably infer that Banister moved the truck to allow for a clear shot at Roger by Brown. Additionally, the evidence established a motive for Banister to assist in orchestrating the shooting of Roger—the “beef” over the gun—which the jury could properly consider in reaching its verdict. *See id.* at 506 (“It is the function of the trier of fact, and not of an appellate court, to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.”).

Therefore, we reject Banister’s arguments and affirm his judgment of conviction.

Upon the foregoing,

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.

Samuel A. Christensen
Clerk of Court of Appeals