COURT OF APPEALS
DECISION
DATED AND FILED

July 28, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2201-CR **Cir. Ct. No. 2013CF158**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAJUAN WILLIAMS, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Ozaukee County: SANDY A. WILLIAMS, Judge. *Affirmed*.

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Dajuan Williams, Jr. appeals a judgment of conviction for five counts of second-degree recklessly endangering safety. Williams argues there was insufficient evidence to convict on each of the charges. We reject Williams' arguments and affirm.

BACKGROUND

¶2 Williams stole a 2006 Porsche Cayenne from a car lot after a test drive.[1] At trial, officer Daren Selk testified he located the vehicle and began following it. Williams turned into the driveway of the Silver Spray Carwash and Selk followed, with his emergency lights and siren activated. Williams slowed briefly and then accelerated rapidly between two islands of gas pumps and around to the back of the carwash building, and drove inside. Selk stopped his squad car and ran into the carwash after the vehicle; he could hear it hitting things and ultimately heard it strike another police squad car at the end of the car wash. Selk estimated Williams was driving fifteen to twenty miles per hour through the parking lot to the carwash entrance and about fifteen miles per hour through the carwash. The video from Selk's squad camera was played for the jury.

¶3 A carwash employee testified the carwash is fitted with a track system that "comes in like a V" at the entrance and carries vehicles through the wash. The track moves at less than one mile per hour, and vehicles are supposed to remain in neutral gear while passing through. The mechanical parts with brushes and mats are automated and would not sense a vehicle driving through off the tracks. Thus, they would remain positioned in the center of the carwash.

¶4 Two carwash employees, E.S. and G.S., were working at the entrance to the carwash bay. G.S. testified he was stationed on the driver's side of the entrance accepting tickets, when a vehicle entered the carwash "without

[1] Williams sped off, but left his state identification card behind. A Porsche Cayenne is a mid-size luxury crossover vehicle, i.e., a small SUV. *See* https://en.wikipedia.org/wiki/Porsche_Cayenne.

stopping and at a high speed. Not a real high speed, but it went in without stopping." G.S. was not close to Williams' vehicle as it passed. Once it was inside, G.S. "heard loud sounds, booms, where the car was hitting the carwash's equipment."

¶5 E.S. was crossing from the driver's side to the passenger side of the carwash entrance when Williams "came in really fast." E.S. jumped out of the way to avoid being hit, and it sounded like Williams "put the gas pedal to the floor" as he passed. E.S. heard a lot of loud noises and banging as the vehicle "hit the brushes."

¶6 A video from the carwash camera was played for the jury. It showed G.S., and it showed E.S. crossing in front of the SUV and jumping out of the way. The video also showed another employee, F.R., run out of the drying area of the carwash.

¶7 F.R. and another employee, A.P., were stationed at the end of the carwash bay, in the drying area. A.P. heard a "very loud acceleration" and "loud hitting noises." He then saw the vehicle "coming quickly." A.P. testified, "[I]t was outside of the car wash's tracks. So right away I stood right up against the wall because I was afraid that it was going to come really close to me …." The vehicle passed within "[m]aybe less than a meter" of A.P.[2]

¶8 F.R. testified he heard the SUV enter the carwash and could tell from the sound that it was driving outside the tracks. F.R. testified, "I looked over

[2] Witnesses A.P, G.S., and F.R. testified with the assistance of a Spanish language certified court interpreter.

so that I could see through the car wash tunnel, and I could hear it becoming louder. I could hear it being revved up like the accelerator, and I could tell that it was breaking pieces of the car wash off." When asked what he did next, F.R. explained, "Well, I didn't wait around for much time. I knew that what was going on was wrong, that what was happening was not right so I tried to run away. I could tell that since it was off the track that I needed to leave so I ran."

¶9 Meanwhile, officer Mark Kastens arrived and parked his squad car facing the carwash exit, three to four feet away. Williams was driving fast as he reached the end of the carwash. He started to slow down but then accelerated and rammed the stolen SUV into the squad car. The SUV's tires were spinning and the squad rocked from the force. Kastens was thrown backward and then forward as he was attempting to exit his squad with his firearm already drawn. Kastens explained:

> I then got out of my squad [and] I was ordering the subject at gunpoint to shut the vehicle off, put it in park …. As I was yelling those commands, his wheels were still spinning, but due to the wet of the interior of the carwash, he couldn't gain any momentum to push my squad.

The video from Kastens' squad camera was then played for the jury.

¶10 F.R. similarly testified that, after running out of the carwash, he "could see then that the truck was starting to come out, but it was starting to slow down. And then when it got close to the squad car, that's when it accelerated again and the tires made a sound."

¶11 Williams pled guilty to operating a vehicle without the owner's consent, felony criminal damage to property, and felony bail jumping. After a jury trial, Williams was found guilty of five counts of second-degree recklessly

endangering safety. E.S., G.S., F.R., A.P., and Kastens were the named victims of the five reckless endangerment counts.[3]

DISCUSSION

¶12 Williams argues there was insufficient evidence to convict him of second-degree reckless endangerment with respect to each of the five victims. We must affirm "unless the evidence, viewed most favorably to the state 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). Stated otherwise, we may not overturn the verdict if any possibility exists that the jury could have drawn the appropriate inferences from the evidence. *See* ***id.*** at 506-07.

¶13 To establish Williams' guilt of second-degree recklessly endangering safety, the State was required to prove: (1) Williams endangered the safety of another person; and (2) Williams did so through criminally reckless conduct. WIS. STAT. § 941.30(2);[4] *see also* WIS JI—CRIMINAL 1347 (2015). To prove Williams acted in a manner that was "criminally reckless," the State had to prove he: (a) created an unreasonable and substantial risk of great bodily harm to another person and (b) was aware of that risk. *See* ***State v. Brulport***, 202 Wis. 2d 505, 519-20, 551 N.W.2d 824 (Ct. App. 1996). Further, as the jury was instructed,

[3] Williams was acquitted of the greater charge of first-degree reckless endangerment with respect to Kastens.

[4] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

great bodily harm is defined as "bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ[,] or other serious bodily injury." *See* WIS. STAT. § 939.22(14); WIS JI—CRIMINAL 1347 (2015).

¶14 We agree with one part of Williams' analysis—that, of the five victims, the evidence was weakest with respect to G.S., who was standing near the carwash entrance when Williams' stolen SUV passed. However, we reject Williams' contention that the evidence was inadequate with respect to each element and subelement of the crime. Williams argues the SUV was not close to G.S. and was not moving particularly fast, and "there was no evidence presented to show that anyone would expect a person to be standing inside of a carwash in the lane in which a vehicle would travel."

¶15 Contrary to Williams' suggestions, the State did not need to prove the various victims only narrowly escaped being struck by the SUV. Rather, the jury had to determine if Williams' actions created a substantial and unreasonable risk of serious bodily injury to the various employees and one police officer. Additionally, despite the standard of review requiring us to construe the evidence in the light most favorable to the State, Williams ignores evidence, and he filed no brief in reply to the State's brief, which cited additional evidence.

¶16 Carwash employees explained that under the proper wash procedure a customer would stop outside the carwash entrance. At that point, G.S. would receive the customer's wash ticket at the driver's side of the vehicle, and he and E.S. would spray the vehicle with pressurized water. Although G.S. testified he was not close to Williams' vehicle, that is a relative statement. He was positioned

near the carwash entrance in anticipation of receiving Williams' wash ticket. Thus, when Williams passed "without stopping and at a high speed[,]" one could reasonably infer G.S. was placed at an unreasonable and substantial risk of being struck by the SUV. But for fortuity, G.S. might have stepped forward to receive the ticket or slipped on wet ground.

¶17 Furthermore, the jury watched the carwash video showing G.S.'s location. Williams fails to discuss the content of any of the three videos played for the jury, and we have not found them in the appellate record. We therefore presume the videos gave rise to reasonable inferences supporting the jury's verdict. It is the appellant's duty to ensure the record is complete, and we assume that missing material supports the result below. *See* ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Additionally, by failing to discuss the videos, Williams' argument is inadequately developed—especially considering we must view all evidence in the light most favorable to conviction. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

¶18 As observed above, the evidence regarding risk of serious bodily injury to the three other employees is stronger than that concerning G.S. E.S. walked directly in the SUV's path at the carwash entrance and then jumped out of the way. Being surprised and given the vehicle's speed, he could have tripped or slipped on wet ground and been struck.

¶19 Once inside, Williams plowed through the carwash at fifteen miles per hour, outside the tracks, and right through the brushing equipment blocking his way. He could have lost control of the vehicle—which the jury could reasonably infer he had little experience handling, considering it was stolen. This is particularly true given the inherently wet and soapy conditions of a carwash, the

obstruction to his vision caused by the brushing equipment, and the possibility that the vehicle might be damaged itself or thrown off course by a piece of broken equipment.

¶20 Given Williams' speed and manner of driving, the jury could reasonably infer that anyone present inside the carwash when Williams entered was at substantial risk of serious bodily harm. This stands true whether the SUV passed within three feet of the employee or the employee was able to run out before it passed. F.R., the employee who ran, could have easily slipped and fallen into the SUV's path.

¶21 This leaves officer Kastens. Williams rammed the police squad and kept the SUV's wheels spinning, rocking the squad back and forth, while Kastens was attempting to exit his squad with a drawn firearm. Williams does not dispute the substantial risk of injury posed to Kastens. Nonetheless, we observe the risk to everyone present was exacerbated because there was a potential that Kastens could have accidentally fired his weapon.

¶22 Williams does, however, argue there was insufficient evidence that he was actually aware of the substantial risk of harm to Kastens and all four carwash employees. Williams did not testify. While there was no direct evidence of his awareness that employees were present, there was also no evidence that he was not aware of the employees' actual or potential presence. The jury could reasonably infer that Williams knew his actions risked substantial harm to anyone present, and that Williams knew there could be employees present at a full-service carwash. With regard to Kastens, the actual-awareness argument is frivolous and merits no discussion.

¶23 In summary, we conclude it was well within the jury's province to conclude the State proved all elements of second-degree reckless injury as to all five victims, when Williams barreled through the carwash without stopping first and then rammed a police squad car at the exit. Had Williams' stolen SUV struck anyone, that person easily could have suffered great bodily harm or death. In addition to the testimony of multiple witnesses, the jury viewed three videos of the crime, each from different vantage points. We must presume the content of those videos further supported the jury's verdict; in any event, Williams failed to discuss the videos in his argument.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.