

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 28, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2005AP2390-CR**

**Cir. Ct. No. 2004CT7027**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**NILSA I. HUERTAS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: RUSSELL W. STAMPER, Reserve Judge. *Affirmed.*

¶1 CURLEY, J.<sup>1</sup> Nilsa I. Huertas appeals the judgment, entered following a jury trial, convicting her of failing to give information or render aid following a motor vehicle accident (commonly referred to as Hit-and-Run),

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

contrary to WIS. STAT. § 346.67(1) (2003-04).<sup>2</sup> Huertas also appeals from the order denying her postconviction motion to vacate the judgment of conviction, or, in the alternative, for resentencing. On appeal, Huertas argues that there was insufficient evidence of an essential element of the charge, namely, that damage occurred as a result of the accident, to convict her. Alternatively, she argues that the trial court erroneously exercised its discretion when sentencing her. Because sufficient evidence was presented on all elements of the charge, and because the trial court properly exercised its discretion, this court affirms.

### I. BACKGROUND.

¶2 Consiglio Cirillo told police that early in the morning of May 13, 2004, he was driving on a street on the south side of City of Milwaukee when he was rear-ended by a car. The driver of the car did not stop. The license plate number of the car which rear-ended Cirillo was obtained from a witness, and the police were contacted. Several hours later, a City of Milwaukee police officer went to Huertas' home and spoke to her, as the license plate of her car matched that of the car that rear-ended Cirillo's car. At first, Huertas denied being in a car accident, but later admitted that she was the driver of the car that struck Cirillo's car and that she failed to stop. Huertas claimed that a car hit her and took off. She told the officer that she failed to stop because she suffers from a panic disorder. She was charged with violating WIS. STAT. § 346.67(1). A jury trial was held, at which time Huertas was found guilty. The trial court sentenced her to ninety days in the House of Correction with Huber privileges and fined her \$300.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

## II. ANALYSIS.

¶3 Huertas argues that the State failed to prove one of the elements of the crime. She maintains that the State failed to prove that any damage resulted from the accident. In the alternative, she submits that the trial court erroneously exercised its discretion when it sentenced her to ninety days in the House of Correction.

¶4 When a defendant challenges the sufficiency of the evidence to support a conviction, the standard of review is whether that evidence, viewed in the light most favorable to the State, is so insufficient in probative value and force that, as a matter of law, no reasonable jury could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 500, 451 N.W.2d 752 (1990). While the State must prove a defendant's guilt beyond a reasonable doubt, the standard of review for the appeals court is limited to a determination of whether the evidence admitted at trial was sufficient to prove the defendant's guilt beyond a reasonable doubt. *State ex rel. Kanieski v. Gagnon*, 54 Wis. 2d 108, 113, 194 N.W.2d 808 (1972).

¶5 The jury instruction given at trial explained to the jury that a conviction of a violation of WIS. STAT. § 346.67(1) requires that the State prove that:

- (1) The defendant operated a vehicle involved in an accident on a highway;
- (2) The defendant knew that the vehicle she was operating was involved in an accident and involved an attended vehicle;
- (3) The accident resulted in damage to a vehicle driven or attended by any person;

(4) The defendant did not immediately stop his or her vehicle at the scene of the accident and remain at the scene until she had fulfilled the following requirements ...; and

(5) The defendant was physically capable of complying with the requirements.

WIS JI—CRIMINAL 2670. Huertas claims that the State failed to prove that damage occurred as a result of the accident. This court disagrees.

¶6 There were several references to damages at the trial. First, the victim of the accident, Cirillo, when asked if his car had been rear-ended, responded “yes.” The term “rear-ended” is slang, meaning “to run into (another motor vehicle) from behind.” AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1505 (3rd ed. 1992). Had this been the only testimony, the jury would have been entitled to assume that the hitting of another car from behind resulted in some damage. However, another reference to vehicle damage came from the investigating officer, who testified that when he went to Huertas’ home, he saw what he termed “corresponding damages” to Huertas’ car. Additionally, when asked, “What damages did you observe on [Huertas’] automobile?,” the officer responded, “Front end. The right-front end corner damage. Right front corner.” This statement, standing alone, was sufficient to prove that damage occurred as a result of the hit and run accident. This is so because the statute does not require that the damage occur to any particular vehicle, only that “the accident resulted in damage to a vehicle driven or attended by any person.” Finally, the officer also testified that he and Huertas looked at her car, and when he asked her what happened to her car, she said she did not know. Clearly, had no damage been evident, Huertas would have said so. Instead, she claimed not to know how the damage occurred. Thus, ample evidence in the record supports the conclusion that

the State proved that the accident in which Huertas failed to stop caused damage to a vehicle.

¶7 This court next considers whether the trial court erroneously exercised its discretion at sentencing. Huertas claims that the trial court “impermissibly punished her for exercising her right to a jury trial.” She observes that both her attorney and the State jointly recommended a fine yet the trial court sentenced her to 90 days in the House of Correction. Huertas argues that the trial court’s sentencing comments reveal that the trial court penalized her for having a jury trial. Again, this court disagrees.

¶8 The appellate standard of review is limited to determining if the sentencing court erroneously exercised its sentencing discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. “When discretion is exercised on the basis of clearly irrelevant or improper factors, there is an erroneous exercise of discretion.” *Id.* When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the trial court in passing sentence: “[S]entencing decisions of the circuit court are generally afforded a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant.” *Id.*, ¶18 (citation omitted). The “sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.” *Id.*, ¶23 (citation omitted).

¶9 The trial court’s sentencing remarks are brief but insightful. The trial court remarked:

On the records, files, and proceedings, the statements of counsels and the defendant, considering the seriousness, the character, and the need to protect the public. All right, we sat through a jury trial on this case. The defendant presented a mental health defense when the only health defense provided in the law related to physical health, which prevented the defendant from being physically able to comply with the statutory requirement providing certain information when an accident occurred.

This defendant tried to deceive, bamboozle, and fool the jury with a mental disability rather than the physical disability defense. This defense did not prevail. The jury took about two hours to dispose of this sham and came to a jury verdict. The Court also notes that the defendant suffered from selective recall on the stand. She was able to accurately remember what she deemed favorable and conveniently forgot details that – can't read what I wrote – that were unfavorable.

She claimed the inability to stop; yet, she did stop, according to her own testimony, some one to two blocks away. She paused around and then she methodically and deliberately transported her sister, who is also in the car with her, to work. The defendant then drove home, another deliberate act.

In no way was her ability to drive impaired. So she took her risk. She threw the dice. She gambled and she lost. The Court deems that her conduct warrants a period of confinement. I'm going to order her to serve 90 days House, Huber, pay – there's a fine associated with this, a minimum mandatory, I believe, of 300 dollars plus the costs of prosecution. Do you claim any credit for time served, counsel?

While Huertas characterizes the trial court's comments as being harsh and driven by a desire to punish her, the record reveals that the trial court was offended by Huertas' attempt to escape the consequences of her crime by having a selective memory of the events, and by trying to "bamboozle" the jury with evidence of a mental disorder, when the facts revealed that she did not suffer from the mental disorder to the extent that she claimed. The trial court appeared to be upset at Huertas' claim that she was unable to stop after the accident as a result of the

disorder, when, in fact, she did stop one block from the accident and then proceeded to drive her sister to work. Nowhere during the trial court's sentencing remarks does the court suggest that its sentence was motivated by Huertas' decision to go to trial. Rather, it appears that the trial court considered the appropriate sentencing factors and determined that Huertas' deceitful testimony deserved incarceration. This was a proper exercise of discretion. *See Gallion*, 270 Wis. 2d 535, ¶18. For the reasons stated, the judgment of conviction is affirmed.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

