COURT OF APPEALS
DECISION
DATED AND FILED

March 23, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP313-CR **Cir. Ct. No. 2007CF1008**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW J. GREENE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: SUE E. BISCHEL, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Matthew Greene appeals a judgment of conviction for one count of aggravated battery with intent to cause great bodily harm and one count of first-degree reckless injury, both as a party to a crime and as a repeater.

He argues there was insufficient evidence at trial to support the verdict. We affirm.

BACKGROUND

¶2 Jason Steeno was brutally beaten in a Green Bay parking garage in the early hours of August 25, 2007.

¶3 After a night of bar-hopping, Steeno and Jacob Folk were listening to music in their car when a dark SUV stopped behind the vehicle. Folk approached the SUV, leaned his head slightly inside the front passenger window, and complimented the occupants on their stereo system. Richard Pease, who was seated behind the driver, punched Folk without provocation.

¶4 Steeno walked behind the SUV and asked why Pease hit his friend. All four SUV doors opened and Pease charged Steeno, knocking him to the cement with a blow to the head. The SUV's other occupants—including Greene—punched and kicked Steeno, who was unable to get up or fight back. Pease stomped on Steeno's head ten to fifteen times. Greene kicked Steeno in his chest, stomach, sides, and back ten to fifteen times. Steeno did not move or talk during the attack. The four men returned to the SUV and immediately left when a security guard approached.

¶5 Steeno suffered severe injuries, including orbital fractures around his eye, a broken nose, hemorrhaging in his brain, a broken jaw, facial lacerations, and head trauma. His jaw needed to be wired shut and he required facial reconstructive surgery and a permanent plate in his mouth.

¶6 At Greene's trial, the jury was instructed it could find him guilty as a party to a crime if he either directly committed the offense or intentionally aided

and abetted the direct offender.[1] *See* WIS. STAT. § 939.05.[2] Greene was convicted of both aggravated battery and reckless injury as a party to the crime and now appeals.

DISCUSSION

¶7 Greene asserts there was insufficient evidence to support the conviction. In reviewing the sufficiency of the evidence, we may not substitute our 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). If there is any possibility the trier of fact could have found the requisite guilt by drawing appropriate inferences from the evidence adduced at trial, an appellate court may not overturn the verdict even if it believes the trier of fact should not have found guilt based on the evidence before it. ***Id.***

¶8 Greene first claims he is not directly liable for aggravated battery because the State failed to prove he intended to cause great bodily harm.[3] Intent

[1] Juror unanimity is not required on the theory of participation, but each juror must be convinced beyond a reasonable doubt that the defendant was involved in the commission of the crime in one of these ways. ***Holland v. State***, 91 Wis. 2d 134, 143, 280 N.W.2d 288 (1979); WIS JI—CRIMINAL 400 (May 2005).

[2] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[3] A person acts with intent within the meaning of the aggravated battery statute if "the actor either has a purpose to … cause [great bodily harm], or is aware that his or her conduct is practically certain to cause [great bodily harm]." WIS. STAT. §§ 939.23(4), 940.19(5). "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." WIS. STAT. § 939.22(14).

"may be inferred from the defendant's conduct itself." ***State v. Hecht***, 116 Wis. 2d 605, 623, 342 N.W.2d 721 (1984). "[W]e will presume that a person intends the natural and probable consequences of his or her voluntary and knowing acts," but "those acts 'must not be so few or of such an equivocal nature as to render doubtful the existence of the requisite criminal intent.'" ***State v. Henthorn***, 218 Wis. 2d 526, 532-33, 581 N.W.2d 544 (Ct. App. 1998) (quoting ***Berry v. State***, 90 Wis. 2d 316, 327, 280 N.W.2d 204 (1979)).

¶9 The evidence, viewed in the light most favorable to the conviction, established Greene repeatedly kicked Steeno in the chest, stomach, back and sides while Steeno lay immobile and defenseless on a concrete floor. In addition, the jury heard testimony that Greene repeatedly bragged that he "knocked a guy out" immediately after the attack. A reasonable juror could have inferred Greene intended to cause great bodily harm from his vicious conduct and statements.

¶10 Greene also claims he cannot be criminally liable for aggravated battery as an aider and abettor because "his acts were not intended to assist Pease in the commission of 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 or she knowingly either assists the person who commits the crime, or is ready and willing to render aid and the person who commits the crime knows of his or her willingness to provide assistance. ***Hecht***, 116 Wis. 2d at 619-20; ***State v. Sharlow***, 110 Wis. 2d 226, 238-41, 327 N.W.2d 692 (1983); WIS JI—CRIMINAL 400 (May 2005).

¶11 Testimony established that after Pease knocked Steeno down with a blow to the head, Greene repeatedly kicked the defenseless Steeno while Pease stomped on him. A reasonable juror could have concluded from this evidence that

Greene knew Pease was committing a crime when he attacked Steeno and knowingly aided in the commission of that crime.

¶12 Finally, Greene argues the State presented insufficient evidence to support his conviction for first-degree reckless injury as a principal and as a party to the crime. A person is guilty of reckless injury where he or she "recklessly causes great bodily harm to another human being under circumstances which show utter disregard for human life." WIS. STAT. § 940.23(1)(a). Criminal recklessness means "the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk." WIS. STAT. § 939.24(1).

¶13 The evidence was sufficient to find Greene guilty of reckless injury both as a principal and as a party to the crime. A reasonable juror could conclude Greene directly committed the offense because Greene repeatedly kicked the incapacitated Steeno in his chest and torso while Pease repeatedly kicked Steeno in the head. Jurors could reasonably infer this conduct was intended to aggravate the severe injuries Pease's actions were likely to, and did, produce. In addition, a reasonable juror could find Greene's conduct demonstrated an utter disregard for human life, which Greene compounded by fleeing the scene. A juror could also find Greene guilty of aiding and abetting reckless injury; he or should could reasonably conclude Greene assisted in the commission of the offense by encouraging Pease or maintaining Steeno's defenseless state.

By the Court.—Judgment affirmed.

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