COURT OF APPEALS
DECISION
DATED AND FILED

October 8, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2190-CR **Cir. Ct. No. 2009CF5751**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ADRIAN J. JACKSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KEVIN E. MARTENS, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Adrian J. Jackson appeals a judgment convicting him of second-degree recklessly endangering safety, substantial battery with intent to do bodily harm, second-degree sexual assault with use of force, false imprisonment, and felon in possession of a firearm. He argues that there was

insufficient evidence to support his sexual assault conviction and that the circuit court erred when it refused to instruct the jury on self-defense. We affirm.

¶2 Jackson first argues that there was insufficient evidence to support his conviction for second-degree sexual assault. To prove second-degree sexual assault, the State must show that a person had "sexual contact" with another person "without consent of that person by use or threat of force or violence." *See* WIS. STAT. § 940.225(2)(a). "Sexual contact" means "[i]ntentional touching by the defendant ... by the use of any body part or object, of the complainant's intimate parts." WIS. STAT. § 940.225(5)(b)1.a. "'Intimate parts' means the … vagina or pubic mound of a human being." WIS. STAT. § 939.22(19). We will "not reverse a conviction 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, 755 (1990).

¶3 Jackson contends that the testimony was insufficient to show that he had contact with the victim's "intimate parts," as opposed to the areas of her body near her intimate parts. The victim testified that Jackson "struck me three times in my vagina right on my pelvic bone" and "made me lay on the bed and like made me hold my legs open and hit me in my—in my vagina with the bat." The victim's testimony alone is more than sufficient to show that Jackson had intentional contact with her "intimate parts." Moreover, the doctor who treated the victim testified that the victim "had very significant swelling of the mons pubis with … erythema or redness" that was "very unlikely to happen without some sort of blunt trauma." The "mons pubis," also known as the "pubic mound," is one of

the areas to which the statute explicitly refers to as an "intimate part." There was sufficient evidence to support the conviction.

¶4 Jackson next argues that the circuit court erred when it refused to instruct the jury on self-defense. A defendant is entitled to a self-defense jury instruction when, viewing the evidence in the light most favorable to the defendant, "a reasonable construction of the evidence will support the defendant's theory" that he or she acted in self-defense. ***State v. Mendoza***, 80 Wis. 2d 122, 153, 258 N.W.2d 260, 273 (1977). "Whether there are sufficient facts to allow the issuing of an instruction is a question of law [that] we review de novo." ***State v. Peters***, 2002 WI App 243, ¶12, 258 Wis. 2d 148, 156, 653 N.W.2d 300, 304.

¶5 "A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person." WIS. STAT. § 939.48(1). However, the statute provides limits to the amount of force that may be used. "The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference." ***Id.*** Moreover, "[t]he actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself." ***Id.***

¶6 Jackson contends that the circuit court erred in denying his request for a self-defense jury instruction because his mother, Dolores Jackson, testified that she saw the victim attempt to stab Jackson with a scissors at the beginning of

the fight.[1] Looking at the evidence in the light most favorable to Jackson, he was not entitled to a self-defense jury instruction because there was no testimony that the victim had a weapon when Jackson dragged her into the bedroom, locked the door, and repeatedly assaulted her with a baseball bat, with a beer bottle and other objects, and by kicking and punching her, all while she was tied up with duct tape. No reasonable person would believe that the force Jackson used was "necessary to prevent imminent death or great bodily harm" to Jackson. *See* WIS. STAT. § 939.48(1). Jackson failed to establish a sufficient factual basis to entitle him to a jury instruction on self-defense.

By the Court.—Judgment affirmed.

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

[1] Jackson's brief points to a section in the transcript where his mother said that the victim was holding a knife, not a scissors. In earlier testimony, the victim testified that she grabbed a scissors after Jackson started to hit her.