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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

May 20, 2026

To:

Hon. William J. Domina
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Hector Salim Al-Homsi
Electronic Notice

George Tauscheck
Electronic Notice

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

2024AP207-CR State of Wisconsin v. Nathanael R. Benton (L.C. #2021CF1999)

Before Neubauer P.J., Gundrum, and Grogan, JJ.

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).

Nathanael R. Benton appeals a judgment convicting him after a jury found him guilty of attempted first-degree intentional homicide with use of a dangerous weapon, battery by a prisoner, and assault by a prisoner by throwing or expelling a bodily substance, all counts as a repeater. Benton challenges only the assault-by-prisoner conviction, arguing the evidence was insufficient to prove that the substance he threw at a correctional officer was urine. 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 (2023-24).[1] We affirm.

We will not reverse a jury verdict for insufficient evidence "unless the evidence, viewed most favorably to the [S]tate 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). When more than one reasonable inference may be drawn from the evidence, we accept the inference drawn by the jury. ***Id.*** at 506-07. "[A] defendant challenging the sufficiency of the evidence bears a heavy burden to show the evidence could not reasonably have supported a finding of guilt." ***State v. Beamon,*** 2013 WI 47, ¶21, 347 Wis. 2d 559, 830 N.W.2d 681. Whether the evidence was sufficient to support a conviction is a question of law we review de novo. ***State v. Smith***, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410.

We conclude that there was sufficient evidence from which a reasonable jury could conclude that Benton threw urine at the officer. At trial, the correctional officer testified that Benton asked to throw away trash. When the officer brought a garbage can to Benton's cell, Benton flicked liquid from a milk carton onto the officer's face and chest. The officer described the liquid as not thick and "very runny." The officer further testified that Benton laughed, asked him "how his cum was, how did it taste," and later repeatedly stated that he would "rather be pissed off than pissed on."

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

A DNA analyst from the Wisconsin State Crime Laboratory testified that analysis of the officer's shirt ruled out semen and saliva. She also testified that the crime lab did not have a test to detect urine and, therefore, could not determine whether urine was present. The analyst explained that the swab taken from the shirt contained a three-person DNA mixture and that there was very strong support for Benton's inclusion in that mixture. She testified that the sample contained a "decent amount" of Benton's DNA.

The circuit court instructed the jury that to convict Benton of assault by a prisoner, the State must prove that Benton threw or expelled "a bodily substance at or towards an officer of the prison or facility ... intend[ing] that the bodily substance come into contact with the other person." The court also instructed the jury that "[u]rine is a bodily substance."

Based on the DNA results and testimony of the officer and the DNA analyst, the jury could reasonably infer that Benton threw his bodily fluid at the officer with intent to have it come into contact with the officer. We conclude that the testimony and other evidence was sufficient evidence to support the verdict.

Benton argues the State failed to prove the liquid was urine because no laboratory test identified urine and the analyst could not verify that the substance on the officer's shirt was urine. Regardless, the jury could reasonably infer that the bodily substance was urine because the testing ruled out semen and saliva, and Benton repeatedly made statements the officer suggesting that he had just thrown either semen or urine at him. The jury was free to determine what weight to give Benton's statements, including whether to treat his references to semen as false taunts while crediting his repeated statements indicating the liquid was urine. *See* ***Poellinger***, 153 Wis. 2d at 506.

Benton also argues that his DNA may have been present on the officer's shirt due to secondary transfer, which occurs when a person's DNA is deposited on one item and transferred from that item to another. Benton's argument that secondary transfer as a possible explanation for his DNA being on the officer's shirt, does not render the evidence insufficient. On sufficiency review, the question is not whether another inference might favor innocence, but whether the evidence supports the theory of guilt accepted by the jury. *See* ***id.*** at 507-08. Here, the analyst acknowledged that although secondary transfer was possible, in her opinion the amount of Benton's DNA present was not the result of "casual contact like that." The jury was entitled to accept that testimony and reject Benton's competing inference.

Upon the foregoing reasons,

IT IS ORDERED the judgment of the circuit court 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