

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

July 2, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 97-1133-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANTHONY J. MILLER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Jefferson County:  
JACQUELINE R. ERWIN, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Anthony Miller appeals from a judgment convicting him of failing to remain at the scene of an accident to render reasonable assistance, contrary to § 346.67(1)(c), STATS. The issue is whether Miller was entitled to a self-defense instruction. We conclude that the trial court did not

erroneously exercise its discretion when it refused to give a self-defense instruction. We therefore affirm.

On May 6, 1996, Anthony Miller, a senior at Fort Atkinson High School, attended a soccer game at Jefferson High School. During the first half of the game, Miller engaged in an unfriendly exchange with Jefferson High School student, Jeffrey Hecht. Miller left the scene in his car when threatened by Hecht. Miller later returned to the scene but remained in his car. Miller noticed Hecht approaching his car. Frightened by Hecht, Miller backed up his car to leave the area and, in the process, hit a post. Miller then drove forward and hit Hecht with his vehicle. Miller then did a U-turn and hit Hecht a second time. Both times Miller injured Hecht.

Miller was charged with first-degree reckless endangerment in violation of § 941.30(1), STATS., and failing to remain at the scene of an accident to render reasonable assistance in violation of § 346.67(1)(c), STATS. Miller requested that a self-defense instruction be given for both counts. The trial court gave a self-defense instruction for the first-degree reckless endangerment charge, but it refused to give a similar instruction for the charge of failing to remain at the scene of an accident to render reasonable assistance. Miller was acquitted on the charge of first-degree reckless endangerment and convicted on the charge of failing to remain at the scene of an accident to render reasonable assistance.

Miller argues that the trial court erroneously exercised its discretion by refusing to give a self-defense instruction regarding the charge of failing to remain at the scene of an accident to render reasonable assistance. Miller claims that he was acting in self-defense when he fled the scene after striking and injuring Hecht with his vehicle. Miller argues that the trial court's refusal to give a self-

defense instruction denied him an available theory of defense. Further, he asserts that failing to remain at the scene of an accident to render reasonable assistance is a strict liability offense. Because Wisconsin recognizes a defense of legal justification for other strict liability offenses, Miller claims that he may assert a claim of self-defense for failing to remain at the scene of an accident to render reasonable assistance. *See State v. Brown*, 107 Wis.2d 44, 318 N.W.2d 370 (1982) (violation of traffic law may be justified if the conduct of a law enforcement officer causes actor to reasonably believe that violating law is only means of preventing bodily harm); *State v. Coleman*, 206 Wis.2d 199, 556 N.W.2d 701 (1996) (narrow defense of privilege exists for felon in possession of firearm). We disagree.

A trial court has wide discretion in issuing jury instructions based on the facts and circumstances of the case. *State v. Roubik*, 137 Wis.2d 301, 308, 404 N.W.2d 105, 108 (Ct. App. 1987). However, a defendant is entitled to an instruction on a valid applicable theory of defense if supported by credible evidence. *State v. Bernal*, 111 Wis.2d 280, 282, 330 N.W.2d 219, 220 (Ct. App. 1983).

Section 346.67(1)(c), STATS.,<sup>1</sup> imposes a duty upon the operator of a vehicle involved in an accident to stop and render reasonable assistance to any

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<sup>1</sup> Section 346.67, STATS., provides as follows:

(1) The operator of any vehicle involved in an accident resulting in injury to or death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the operator has fulfilled the following requirements:

....

(continued)

person injured in the accident. Section 939.48(1), STATS., defines self-defense as a threat or intentional use of force against another for the purpose of preventing or terminating what the person believes to be an unlawful interference with his or her person by such other person. After hitting Hecht with his car, Miller did not use or threaten to use force as required by § 939.48(1), STATS. Rather, Miller left the scene of the accident. Self-defense is not available as a privilege to a defendant in the absence of evidence that the defendant used force. *See State v. Olsen*, 99 Wis.2d 572, 580, 299 N.W.2d 632, 636 (Ct. App. 1980).

A self-defense instruction for failing to remain at the scene of an accident to render reasonable assistance was not supported by the evidence. The trial court did not erroneously exercise its discretion by refusing to give the self-defense instruction Miller requested. Accordingly, we affirm.

*By the Court.*—Judgment affirmed.

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

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(c) The operator shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

