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DISTRICT I

October 21, 2025

To:

Hon. David A. Feiss
Reserve Judge

Angela Conrad Kachelski
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

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

2024AP1231-CR State of Wisconsin v. Demetrius Andrew Pearson
(L.C. # 2019CF3496)

Before Colón, P.J., Donald, and Geenen, 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).

Demetrius Andrew Pearson appeals from a judgment of conviction, entered after a jury found him guilty of: (1) first-degree recklessly endangering safety by use of a dangerous weapon; and (2) possession of a firearm while a felon.[1] The circuit court found that he committed both crimes as a habitual offender. Pearson alleges that the evidence was insufficient to support his conviction for first-degree recklessly endangering safety by use of a dangerous

[1] The jury also found Pearson guilty of a third crime charged in a separate criminal case that was joined for trial with the instant matter. The judgment of conviction in that separate case is not before us, and we do not discuss it further.

weapon. Based upon a review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[2] We summarily affirm.

On August 7, 2019, police officers received reports of gunfire and responded to the upper unit of a Milwaukee duplex in the 200 block of North 52nd Street. The officers arrested Pearson at the scene. The State charged him with first-degree recklessly endangering safety by use of a dangerous weapon and with possessing a firearm while a felon, all as a habitual offender. Pearson entered not-guilty pleas.

The case proceeded to a jury trial. Q.J. testified that Pearson was her ex-boyfriend and that on August 7, 2019, after their romantic relationship had ended, she was visiting him at his home. There, they smoked marijuana and drank vodka while socializing with another member of Pearson's household, T.P., and T.P.'s guest. After an hour or two, Pearson and Q.J. began arguing about their plans for the evening, and then Pearson pulled out a gun and fired a shot in her direction. Q.J. testified that she was approximately six feet away from Pearson at the time, and the bullet "went through the window right next to [her]." Q.J. said that she was frightened and ran to another room, but Pearson followed her, saying "[l]ook what you made me do." On cross-examination, Q.J. acknowledged that she had previously been convicted of a crime.

T.P. testified that he was Pearson's godfather and that on August 7, 2019, he and Pearson resided together in an upper flat on North 52nd Street. T.P. described socializing at home that evening with Pearson and their guests. T.P. said that as the evening progressed, Pearson argued

[2] Although the charges against Pearson arose when the 2019-20 version of the Wisconsin Statutes was in effect, subsequent statutory revisions did not affect the parts of the statutes that are relevant to the discussion in this opinion. Accordingly, all references to the Wisconsin Statutes are to the 2023-24 version.

with Q.J., and began "raging" at her. T.P. said that Pearson produced a gun and "was just waving it around" and then, according to T.P., the gun "accidently went off and shot through the window." T.P. went on to say that Q.J. was sitting across from Pearson at the time and the bullet flew "above her head.... Up above towards her." T.P. testified that after the shot was fired, he and Q.J. were both "in shock" because "the bullet could have hit either one of us at the time."

A detective testified about responding to a "shots fired" report at the residence on North 52nd Street and finding Pearson at the scene. One of the windows in the home had a bullet hole, and the detective said that the "strike ... look[ed] fresh." The detective searched the home and discovered a gun next to mail that was addressed to Pearson. The gun was loaded with five live rounds and had one spent casing in the chamber. Finally, the State presented evidence about DNA collection and analysis that excluded Pearson as the major contributor to the DNA mixture found on the gun and that the DNA evidence provided no identifying information about the remaining contributors due to the limited amount of DNA that was recovered.

The jury found Pearson guilty on all counts. He appeals, challenging the sufficiency of the evidence supporting his conviction for first-degree reckless injury by use of a dangerous weapon.

Whether the State presented sufficient evidence at trial to sustain a guilty verdict is a question of law, and therefore we review that question de novo. ***State v. Smith***, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. Our review is "highly deferential." ***State v. Kimbrough***, 2001 WI App 138, ¶12, 246 Wis. 2d 648, 630 N.W.2d 752. We may not substitute our judgment for that of the factfinder "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). Accordingly, we must affirm a guilty verdict "[i]f any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt," even if we believe that the trier of fact should not have found guilt based on the evidence presented. ***Id.***

We first address Pearson's arguments that Q.J.'s "testimony was patently incredible," and the jurors therefore could not reasonably rely upon that testimony. *See* ***State v. Below***, 2011 WI App 64, ¶3, 333 Wis. 2d 690, 799 N.W.2d 95 (explaining that assessment of the evidence rests exclusively with the jury unless it relied on evidence that is "inherently or patently incredible"). We reject these contentions.

Testimony is patently incredible when it is "in conflict with nature or fully established or conceded facts." ***State v. Jacobs***, 2012 WI App 104, ¶20, 344 Wis. 2d 142, 822 N.W.2d 885 (citation omitted). Pearson fails to demonstrate that Q.J.'s testimony meets that standard. The record shows that at trial, Pearson urged the jury to disbelieve Q.J. in light of her consumption of intoxicants before the shooting, the termination of her romantic relationship with Pearson, and her prior criminal conviction. A jury is entitled to consider such factors when judging the credibility of a witness. *See* WIS JI—CRIMINAL 300, 325. The existence of these factors, however, does not demonstrate that a witness's testimony conflicts with the laws of nature or fully established facts. ***State v. Clark***, 87 Wis. 2d 804, 816, 275 N.W.2d 715 (1979) (explaining that evidence undermining the reliability of a witness's testimony does not render that testimony incredible as a matter of law). Accordingly, the credibility and weight to assign to Q.J.'s testimony were matters that rested with the jury, not this court. *See* ***State v. Sharp***, 180 Wis. 2d 640, 659, 511 N.W.2d 316 (Ct. App. 1993).

We turn to Pearson's substantive challenge to the sufficiency of the evidence. Before the jury could convict Pearson of first-degree recklessly endangering safety by use of a dangerous weapon, the State was required to prove beyond a reasonable doubt that: (1) he endangered the safety of another human being; (2) the endangerment of safety was by criminally reckless conduct; (3) the circumstances of the conduct showed utter disregard for human life; and, (4) he did so while using a dangerous weapon. *See* WIS. STAT. §§ 941.30(1), 939.63; WIS JI—CRIMINAL 1345, 990. The circuit court so instructed the jury. Further, the circuit court instructed the jury that criminally reckless conduct is conduct that "created a risk of death or great bodily harm to another person[;]" "the risk of death or great bodily harm was unreasonable and substantial[;] and the defendant was aware that his conduct created the unreasonable and substantial risk of death or great bodily harm." *See* WIS JI—CRIMINAL 1345. Pearson's defense at trial was that he fired the gun accidentally. At his request, the circuit court therefore gave the jury an accident instruction, which provided: "[t]here is evidence that the defendant did not act with awareness of the risk but rather what happened was an accident. If the defendant did not act with awareness of the risk required for a crime, the defendant is not guilty of that crime." *See* WIS JI—CRIMINAL 772.

On appeal, Pearson argues that the State failed to prove that his conduct was criminally reckless. He reminds us that T.P. told the jury that the gun "went off by accident," and Pearson emphasizes the circuit court's instruction that "if the defendant did not act with awareness of the risk required for a crime, the defendant is not guilty of that crime." Pearson concludes that "the evidence was not sufficient to support the conviction where there was evidence that the discharge of the firearm was accidental." He is wrong.

The jury was "entrusted with the duty to make factual determinations at trial." ***State v. Molde***, 2025 WI 21, ¶7, 416 Wis. 2d 262, 21 N.W.3d 343. T.P. testified that Pearson fired the gun accidently, but Q.J. testified differently, telling the jury that Pearson "tried to shoot [her]." The jury had the duty to determine who, if anyone, to believe in this regard. ***Id.*** (explaining that "the jury must decide for itself whether to believe a witness's testimony in whole, in part, or not at all"). Further, and perhaps more importantly, the jury was free to credit T.P.'s testimony that Pearson was "raging" at Q.J., and was "waving the gun around" before firing it. *See* ***id.*** A jury may conclude that a defendant who escalated a dispute by producing and wielding a loaded gun was engaged in reckless conduct, regardless of whether the defendant meant to pull the trigger. *See* ***Lofton v. State***, 83 Wis. 2d 472, 488-89, 266 N.W.2d 576 (1978).

The totality of the evidence thus supported a reasonable inference that Pearson engaged in criminally reckless conduct. *See* ***Poellinger***, 153 Wis. 2d at 507. Of course, the jury might have rejected that inference, but the decision was for the factfinder, not this court.

In sum, Pearson fails to demonstrate that the evidence, viewed in the light most favorable to the State, was so insufficient in probative value and force that no factfinder, acting reasonably, could have found him guilty beyond a reasonable doubt of first-degree recklessly endangering safety while armed with a dangerous weapon. *See* ***id.*** Accordingly, he is not entitled to relief from his conviction. For all the foregoing reasons, we affirm.

IT IS ORDERED that the judgment 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