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DISTRICT IV

November 20, 2025

To:

Hon. R. Alan Bates
Reserve Judge

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Clerk of Circuit Court
Lafayette County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1941-CR State of Wisconsin v. Emil L. Melssen (L.C. # 2021CF26)

Before Graham, P.J., Blanchard, and Kloppenburg, 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).

Emil Melssen appeals a judgment of conviction for substantial battery and disorderly conduct. On appeal, he argues that the evidence at trial was insufficient to support the convictions, and that the circuit court erred when it allowed evidence of his drug-related activities to be presented at trial. Based on 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.

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

Background

The events that led to Melssen's conviction occurred on the afternoon of May 25, 2021, when Melssen and the victim, "Y.Z.," got into a physical altercation outside a residence occupied by "A.B."[2] At the time, A.B. and Y.Z. were dating, and A.B. was also having a sexual relationship with Melssen. When Melssen arrived at A.B.'s residence that afternoon, he found Y.Z. sitting in a vehicle in the driveway. Melssen approached the vehicle and, in the altercation that followed, Melssen punched Y.Z. and damaged his vehicle and Y.Z. stabbed Melssen in the arm. Melssen was charged with substantial battery, disorderly conduct, and criminal damage to property.

In the course of investigating the altercation between Melssen and Y.Z., police received information that suggested that Melssen was involved with the possession and distribution of illegal drugs. Police ultimately obtained a warrant to search Melssen's residence and recovered methamphetamine and paraphernalia consistent with the sale and use of drugs. In a separate case, the State charged Melssen with possession with intent to deliver methamphetamine, possession of drug paraphernalia, and maintaining a drug trafficking place. *See* ***State v. Melssen***, Lafayette County Case No. 2021CF29 (the "drug case").[3]

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86, we refer to the victim and his former girlfriend, who was a witness at trial, using initials that do not conform to their actual names.

[3] Melssen was convicted of the charges in the drug case, and he appealed. *See* ***State v. Melssen***, Appeal No. 2024AP1942-CR. On our own motion, we consolidated the two appeals for briefing and disposition. However, after reviewing the briefing, we have determined that the appeals are best suited for separate dispositions. Therefore, we have now unconsolidated the appeals for purposes of disposition, and we are issuing a separate opinion that resolves Appeal No. 2024AP1942-CR.

Turning to the battery and disorderly conduct charges at issue here, a jury trial was held in March 2024. At trial, the State argued that Melssen was the aggressor in the May 2021 altercation, and that he had attacked Y.Z. on A.B.'s behalf. Specifically, the State's theory was that Melssen confronted Y.Z. about a fight that had occurred between Y.Z. and A.B.

The State called several witnesses including Y.Z., who testified as follows. On the morning of the altercation, Y.Z. and A.B. got into a fight after Y.Z. received information that A.B. was having sex with Melssen. Y.Z. left A.B.'s residence, but he returned after A.B. asked him "to come back" to "try to work things out." Y.Z. was waiting in his truck outside of A.B.'s home when Melssen's vehicle came "racing down the driveway" and came to "a screeching halt right behind [Y.Z.'s truck]." Melssen then "jumped out" of his vehicle, ran up to the open window of Y.Z.'s truck, grabbed Y.Z. by the shirt, and began to punch him. Y.Z. opened a pocketknife in an attempt to protect himself and "scare" Melssen off, and Y.Z. did not realize that he stabbed Melssen in the process. At some point during the altercation, Melssen ripped the mirror off of Y.Z.'s truck and struck the truck with some type of object that A.B.'s friend, who was also present, had thrown to Melssen.

The State also called A.B., who testified that on the morning of the altercation, she phoned Melssen, who was her "drug dealer" at the time. Melssen objected to the reference to him being a "drug dealer," but the circuit court overruled the objection. A.B. further testified as follows. When she called Melssen, she told him that Y.Z. was "going crazy again" and "had put his hands on" her. A.B. and Melssen then "came to an agreement" that Melssen would "approach" Y.Z. later that day and "confront him about how he was treating [A.B.]" Although A.B. did not witness the beginning of the altercation, she came outside after hearing her friend

yell "Oh boy." She heard "yelling between [Melssen and Y.Z.]" and she saw Melssen punch Y.Z. "through the [truck] window" "[a]t least two or three" times.

Melssen was the sole witness for the defense. He did not dispute that he punched Y.Z., but asserted that it was in self-defense. Specifically, Melssen testified that he ran into Y.Z. by chance at A.B.'s home when he came by to pick A.B. up for a road trip. When Melssen approached Y.Z.'s truck to greet him and ask him a question, Y.Z. stabbed Melssen with a knife. Melssen did not realize at the time that he had been stabbed—he just felt "a sudden … prick in [his] arm" and, in a "quick reflex," Melssen "swung up" and punched Y.Z. in the face. Melssen then "ducked" behind the side-view mirror and "grabbed" it, inadvertently knocking the mirror off of the truck. At no point did Melssen use an object to strike the vehicle.

During direct and cross-examination, Melssen was asked questions about his use or delivery of controlled substances, including in connection with A.B. Melssen acknowledged that he and A.B. used drugs together, but testified that it was always A.B. who supplied the drugs; that he never supplied drugs to anyone; and that he used drugs only when people shared drugs with him.

On rebuttal, over Melssen's objection, the State introduced evidence to impeach Melssen's testimony on these drug-related points. Specifically, the State called the detective who executed the search warrant of Melssen's residence, and the detective testified that a "substantial amount of methamphetamine" and "drug paraphernalia" were found in the search. The State also called A.B. to impeach Melssen's testimony that he never supplied her with drugs. Melssen's defense counsel acknowledged that this testimony from A.B. was "fair game."

The jury found Melssen guilty of the substantial battery of Y.Z. and disorderly conduct, but acquitted him of criminal damage to property.

Discussion

We address Melssen's arguments about the sufficiency of the evidence and the admission of evidence related to his drug activities in that order.

I. Sufficiency of the Evidence

Whether the evidence was sufficient to sustain a guilty verdict presents a legal question that we review de novo. ***State v. Smith***, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. When conducting this review, we give "great deference to the determination of the trier of fact" and "examine the record to find facts that support upholding the jury's decision to convict." ***State v. Hayes***, 2004 WI 80, ¶57, 273 Wis. 2d 1, 681 N.W.2d 203. We reverse the conviction only where the evidence "is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See* ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

To convict Melssen of substantial battery, the State needed to prove that Melssen "caused substantial bodily harm" to Y.Z. and that Melssen "intended to cause bodily harm" to Y.Z. *See* WIS JI—CRIMINAL 1222 (2017). The State presented sufficient evidence to satisfy both elements. With respect to the first element, whether Melssen caused "substantial bodily harm" to Y.Z., the testimony from A.B., Y.Z., and Melssen confirmed that Melssen hit Y.Z. in the face. And, given Y.Z.'s testimony that Melssen's punches caused a laceration above his left eye that had to be treated with adhesive, the jury could conclude that the bodily harm was substantial.

See WIS JI—CRIMINAL 1222 (a laceration that requires stiches, staples, or tissue adhesive is "substantial bodily harm"). Regarding the second element, the jury could reasonably infer that Melssen "was aware that his conduct was practically certain" to cause injury and "intended to cause bodily harm" when he hit Y.Z. in the face. WIS JI—CRIMINAL 1222.

In addition, the State was also required to disprove that Melssen acted in self-defense. *See* ***State v. Staples***, 99 Wis. 2d 364, 376, 299 N.W.2d 270 (Ct. App. 1980). Regarding self-defense, the jury was instructed as follows, consistent with the pattern jury instruction:

> The law of self-defense allows the defendant to … intentionally use force against another only if the defendant believed that there was an actual or imminent unlawful interference with the defendant's person, and the defendant believed the amount of force the defendant used … was necessary to prevent or terminate the interference, and the defendant's beliefs were reasonable. A belief may be reasonable even though mistaken. In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense. The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of the defendant's acts and not from the viewpoint of the jury now.
>
> There is no duty to retreat; however, in determining whether the defendant reasonably believed the amount of force used was necessary to prevent or terminate the interference, you may consider whether the defendant had the opportunity to retreat with safety, whether such retreat was feasible, and whether the defendant knew of the opportunity to retreat.
>
> You should also consider whether the defendant provoked the attack. A person who engages in unlawful conduct of a type likely to provoke others to attack and who does provoke an attack is not allowed to use … force in self-defense against that attack. However, if the attack which follows causes the person reasonably to believe that he or she is in imminent danger of death or great bodily harm, he or she may lawfully act in self-defense; but the person may not use … force intended or likely to cause death unless he or she reasonably believes that he or she has exhausted every reasonable means to escape … or otherwise avoid death or great bodily harm. A person who provokes an attack may regain

> the right to use or threaten force if the person in good faith withdraws from the fight and gives adequate notice of the withdrawal to his assailant. The State must prove by evidence which satisfies you beyond a reasonable doubt that the defendant did not act lawfully in self-defense.

See WIS JI—CRIMINAL 801, WIS JI—CRIMINAL 810, WIS JI—CRIMINAL 815.

Y.Z. and Melssen gave conflicting accounts about how the altercation started, and it was up to the jury to determine which account was more credible. *See* ***State v. Below***, 2011 WI App 64, ¶4, 333 Wis. 2d 690, 799 N.W.2d 95 ("the trier of fact is the sole arbiter of the credibility of witnesses and alone is charged with the duty of weighing the evidence"). It appears that the jury credited Y.Z.'s account and discredited Melssen's account, and that is enough to end the analysis on this issue. We also observe, however, that even if the jury fully credited Melssen's account that he punched Y.Z. in the face in a "quick reflex" after he felt a prick in his arm, the jury could easily have found that Melssen's testimony did not describe an act of self-defense. Among other things, Melssen did not testify that he punched Y.Z. in the face in order to prevent Y.Z. from hurting him, and it was undisputed that Y.Z. was restrained by the fact that he was sitting in his car when he stabbed Melssen in the arm while Melssen was outside the car. Under the circumstances, a jury could reasonably determine that Melssen could not have reasonably believed that it was necessary to punch Y.Z. in the face in order to terminate the interference with his person. We therefore conclude that sufficient evidence was presented to sustain Melssen's conviction for substantial battery.

We now turn to Melssen's conviction for disorderly conduct, which required the State to prove that Melssen engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct, and that Melssen's conduct, under the circumstances, as they then existed, tended to cause or provoke a disturbance. WIS JI—CRIMINAL 1900.

We conclude that the State presented sufficient evidence to satisfy both elements. With respect to whether Melssen engaged in conduct that was "violent," "indecent," or "otherwise disorderly," Y.Z.'s testimony satisfied this element. As mentioned, Y.Z. testified that Melssen came "racing down the driveway" in his truck; grabbed Y.Z. by the shirt; and punched him. Regarding the second element, we are satisfied that the jury could reasonably find that Melssen's conduct caused or provoked a "disturbance." Among other things, A.B. testified that she heard her friend yell "Oh boy," which prompted A.B. to come outside to watch whatever was going on, that she heard Melssen and Y.Z. yelling at each other, that she saw her friend grab an object and throw it to Melssen in an attempt to assist him, and that Melssen struck Y.Z.'s truck with that object. We conclude that there was sufficient evidence presented for the jury to convict Melssen of disorderly conduct.

II. Admission of Drug Evidence

Melssen also argues that the circuit court erroneously exercised its discretion when it admitted evidence of his drug activities at trial. Specifically, Melssen argues that the court erred by allowing A.B. to testify that Melssen was her "drug dealer" and by allowing the State to present testimony that authorities recovered drugs and drug paraphernalia from Melssen's property when they executed a search warrant.

For the purposes of this appeal, we assume without deciding that the circuit court erred in admitting this evidence. But, as we now explain, even if the court erred, Melssen is not entitled to relief because the admission of this evidence was harmless.

We will not reverse a conviction based on erroneous evidentiary rulings unless the errors affected the defendant's "substantial right." *See* WIS. STAT. § 901.03; ***State v. Hunt***, 2014 WI

102, ¶26, 360 Wis. 2d 576, 851 N.W.2d 434. Under this rule, an error is harmless if the "jury would have arrived at the same verdict had the error not occurred." ***State v. Martin***, 2012 WI 96, ¶45, 343 Wis. 2d 278, 816 N.W.2d 270 (emphasis omitted). In determining whether an error is harmless, we consider, among other things, "the importance of the erroneously admitted … evidence"; "the nature of the defense"; "the nature of the State's case"; and "the overall strength of the State's case." ***Hunt***, 360 Wis. 2d 576, ¶27.

Here, the disputed issues at trial related to whether Melssen's conduct on the day of his altercation with Y.Z. satisfied the elements of substantial battery and disorderly conduct based on the evidence that we have summarized above. The fact that Melssen was purportedly a drug dealer and possessed drugs and drug paraphernalia at his residence had no bearing on whether Melssen committed substantial battery, acted in self-defense, or caused a disturbance.

At most, Melssen argues that the evidence of his illicit drug activity may have tipped the scales in the State's favor by making the jury think he was "more likely to commit a crime." A similar argument might be persuasive in other situations, but not under these facts. First, the circuit court instructed the jury not to consider this evidence for improper purposes such as character or propensity, and "[w]e presume that juries comply with properly given limiting and cautionary instructions." *See* ***State v. Marinez***, 2011 WI 12, ¶41, 331 Wis. 2d 568, 797 N.W.2d 399. Second, the evidence that the State presented against Melssen on these charges was so strong that the scales were already tipped heavily in the State's favor; under the circumstances, it is unlikely that erroneously admitted testimony on unrelated matters could have induced a jury to convict when the jury would have otherwise acquitted him. By way of illustration, Y.Z. and A.B. were the most critical witnesses (aside from Melssen), and their version of events was that Melssen was the aggressor and that he did not act in self-defense. Melssen was the only witness

who testified that he acted in self-defense, and he gave inconsistent and sometimes contradictory testimony about a number of matters that had nothing to do with drugs; these inconsistencies and contradictions could easily have impaired his credibility with the jury. Finally, there was also testimony from police officers who investigated the altercation, and their testimony strongly supported the reasonable inference that the evidence collected at the scene was generally consistent with Y.Z. and A.B.'s similar accounts of the altercation, and inconsistent with Melssen's. Accordingly, the State had a strong case against Melssen, and we conclude that the jury would have arrived at the same verdict had the drug evidence not been admitted.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to 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