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**DISTRICT IV**

November 19, 2020

*To:*

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

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2019AP1773-CR

State of Wisconsin v. Eratus Sean Green (L.C. # 2018CF826)

Before Fitzpatrick, P.J., Graham, and Nashold, 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).**

Eratus Green appeals a judgment of conviction for substantial battery. Green contends that the evidence was insufficient to support the conviction. 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 (2017-18).<sup>1</sup> We summarily affirm.

Green was charged with aggravated battery as a party to a crime based on the victim's report to police that Green and another man physically attacked her. At a bench trial, the victim testified that Green punched her multiple times in the face and that the other man involved in the attack hit her in the head with a pistol. She testified that, as a result of the attack, her face was swollen, she was bleeding from her mouth, and she lost consciousness. She testified further that, during the attack, "my teeth got busted off in my gums in my mouth. They've already removed three of them." She testified that "my tooth got busted and my gum, it got infected so they had to remove two teeth on this side, one on this side where it got cracked. My front teeth all have to get removed because they're broken off." On cross-examination, the victim stated that she did not report any dental injuries when she went to the hospital several days after the attack because her face was so swollen that she did not feel the pain in her mouth. The court found Green guilty of the lesser-included offense of substantial battery. *See* WIS. STAT. § 940.19(6) (aggravated battery) and 940.19(2) (substantial battery).

Green argues that the evidence was insufficient to support his conviction for substantial battery. He contends that the evidence at trial did not support the circuit court's finding that Green's actions caused the victim to have teeth removed. *See* WIS. STAT. §§ 940.19(2) (conviction for substantial battery requires proof that defendant caused substantial bodily harm to another); 939.22(38) (providing that "[s]ubstantial bodily harm" includes "loss or fracture of a

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

tooth”). Green contends that the victim’s testimony that Green’s attack caused her to need to have teeth extracted was incredible because: (1) the victim mentioned the dental injury in only one of several reports of her injuries; (2) there is no obvious swelling of the victim’s face in pictures taken at the hospital several days after the attack, despite the victim’s explanation at trial that she did not report the dental injury at the hospital because her face was so swollen that she could not feel the pain in her mouth; (3) the medical records from the victim’s hospital visit several days after the attack do not include any diagnosis of injury to the victim’s face or teeth but note that the victim’s teeth were in generally poor repair; and (4) patient notes from the victim’s dental visit almost two months after the attack indicate that the victim presented with “spontaneous pain” to her teeth and tooth decay that resulted in a low restorative prognosis, but do not note any signs of trauma to her teeth or gums. Green contends that it was unreasonable for the circuit court to find credible the victim’s testimony that her teeth needed to be removed due to Green punching her in the face because that testimony was not supported by the medical records and photographs of the victim’s injuries. He asserts, rather, that the victim’s testimony that Green caused her to lose her teeth was contradicted by the medical records and photographs that did not document those injuries. He also argues that the victim lacked credibility based on her reported drug and alcohol use prior to the attack and her inability to recall specific details as to the attack and her injuries.

The State responds that the evidence was sufficient to support the court’s finding that Green’s actions caused the victim’s need to have teeth removed. Specifically, the State argues that the court’s finding was supported by the victim’s testimony that Green repeatedly punched her in the face; that she suffered swelling in her face and bleeding from her mouth from the attack; and that her “teeth got busted off in my gums in my mouth,” her gum became infected,

and she then had to have teeth extracted. The State disputes Green’s contention that the victim’s testimony was incredible based on the lack of other evidence to confirm her injuries to her teeth from Green punching her in the face. The State argues that no evidence directly contradicts the victim’s testimony, and that the court’s determination that the victim’s testimony was credible was sufficient to support the conviction.

A claim of insufficiency of the evidence requires a showing that “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 (1990). We defer to the circuit court’s credibility determinations. *See State v. Oswald*, 2000 WI App 3, ¶47, 232 Wis. 2d 103, 606 N.W.2d 238 (1999). We will only disturb a credibility determination by the circuit court if the evidence deemed credible “conflicts with the laws of nature or with fully established or conceded facts.” *State v. Below*, 2011 WI App 64, ¶3, 333 Wis. 2d 690, 799 N.W.2d 95.

We conclude that the victim’s testimony at trial that Green’s punching her repeatedly in the face caused her to need to have teeth removed was sufficient to support Green’s conviction for substantial battery. We are not persuaded by Green’s argument that the victim’s testimony was inherently incredible. While Green points to evidence that he believes the circuit court should have relied on to deem the victim’s testimony incredible—the victim’s drug and alcohol use, her failure to provide details, and the lack of medical evidence confirming the victim’s testimony—nothing that Green cites establishes that the victim’s testimony was contrary to the laws of nature or established facts. *See id.* The circuit court was entitled to deem the victim’s testimony credible even if the evidence would have allowed another factfinder to make a

different finding. *See id.*, ¶4 (“It is exclusively within the trier of fact’s province to decide which evidence is worthy of belief, which is not, and to resolve any conflicts in the evidence.”). Thus, the circuit court was entitled to deem credible the victim’s testimony that she suffered injuries during the attack that resulted in her need to have teeth removed, even though the victim did not report any injuries to her teeth at the hospital and medical records and photographs did not confirm her testimony as to mouth injury and facial swelling. Moreover, we are not persuaded by Green’s contention that evidence of the victim’s tooth decay required the circuit court to find that Green’s punching her in the face was not the cause of her needing to have teeth removed. Again, the circuit court was entitled to find that the attack caused the victim’s loss of teeth, even if the evidence would have also supported a contrary finding. *See id.*

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*