OFFICE OF THE CLERK
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 I

January 22, 2025

To:

Hon. Jean M. Kies
Circuit Court Judge
Electronic Notice

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

Sonya Bice
Electronic Notice

Annice Kelly
Electronic Notice

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

2023AP839-CR State of Wisconsin v. Breon Jesse Eskridge (L.C. # 2019CF5179)

Before White, C.J., Donald, P.J., and Geenen, J.

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).

Breon Jesse Eskridge appeals from a judgment, entered on a jury's verdict, convicting him on one count of possession of a firearm by a felon. Eskridge argues that there was insufficient evidence to support the verdict. 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 (2021-22).[1] The judgment is summarily affirmed.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

On June 28, 2019, S.A.G. made a police report against her boyfriend, Eskridge. She told police that they had an argument that morning. Shortly thereafter, S.A.G.'s phone rang. Eskridge answered it, and another man was on the phone. Eskridge became upset and pulled out a handgun. According to S.A.G., Eskridge held the gun to her head and threatened to kill her; he also forced her to open her mouth so he could stick the handgun barrel in.

Around 6 a.m., S.A.G. retrieved her keys and went to her car, which was parked on the street opposite their location. S.A.G. removed Eskridge's belongings from the car and threw them out the driver's door. She then reportedly saw Eskridge take a "sniper-type" position and heard two gunshots. S.A.G. froze; Eskridge got in the car with the gun and told her to move over. Eskridge began driving. He eventually stopped the vehicle and left around 11 a.m. when his mother arrived at his location. S.A.G. drove immediately to the police station.

At approximately 6:05 a.m. on June 28, 2019, Officers Ryan Sharp and Samuel Kehoss stated they were dispatched to the front of 2052 North 34th Street, directly across the street from Eskridge's cousin's home, when ShotSpotter detected two gunshots in front of that location. Upon arrival, police were unable to locate anyone with information, but they did recover one .40-caliber bullet casing on the cement steps in the yard area.

Eskridge was charged with first-degree recklessly endangering safety with use of a dangerous weapon and possession of a firearm by a felon. The matter was tried to a jury. The jury acquitted Eskridge of the endangering safety charge, but convicted him of the possession charge. The trial court sentenced him to four years of initial confinement and three years of extended supervision. Eskridge appeals, arguing there was insufficient evidence to convict him

on possession of a firearm because the acquittal on the first count signals that the jury disbelieved S.A.G.'s testimony.

"When a defendant challenges a verdict based on sufficiency of the evidence, we give deference to the jury's determination and view the evidence in the light most favorable to the State." ***State v. Long***, 2009 WI 36, ¶19, 317 Wis. 2d 92, 765 N.W.2d 557. Whether the evidence is direct or circumstantial, this court "may not substitute its judgment for that of the trier of fact 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, 501, 507, 451 N.W.2d 752 (1990). "If 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, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it." ***Id.*** at 507.

A conviction may be supported solely by circumstantial evidence and, in some cases, circumstantial evidence may be stronger and more satisfactory than direct evidence. ***Id.*** at 501-02. On appeal, the standard of review is the same whether the conviction relies upon direct or circumstantial evidence. ***Id.*** at 503. An appellate court need only decide whether the evidence supporting that theory is sufficient to sustain the verdict. ***Id.*** at 507-08. The jury is the sole arbiter of witness credibility and it alone is charged with the duty of weighing the evidence. *See* ***id.*** at 506.

Eskridge contends that the only evidence supporting his felon in possession conviction was S.A.G.'s testimony, which the jury must have disregarded based on the acquittal for reckless

endangerment.[2] Thus, he contends, there is actually no evidence supporting his conviction. We disagree.

A jury, as the ultimate arbiter of credibility, has the power to accept one portion of a witness's testimony and reject another portion; a jury can find that a witness is partially truthful and partially untruthful. ***O'Connell v. Schrader***, 145 Wis. 2d 554, 557, 427 N.W.2d 152 (Ct. App. 1988). We defer to the jury's function of weighing and sifting conflicting testimony in part because of the jury's ability to give weight to nonverbal attributes of the witnesses. *See* ***State v. Wilson***, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989). The jury may well have rejected S.A.G.'s testimony about Eskridge's behavior with the gun—i.e., his reckless endangerment—because she had given multiple versions of events, none of which were particularly consistent and none of which were corroborated. However, the jury could have nevertheless accepted S.A.G.'s testimony that Eskridge was in possession of a gun, because that fact was indirectly corroborated. The ShotSpotter report confirmed two gunshots, at nearly the same time that S.A.G. reported hearing them, and the police recovered one spent shell casing in the immediate area. When we view the evidence in the light most favorable to the State and the conviction, there is sufficient evidence from which to draw a conclusion that Eskridge, a convicted felon, possessed a firearm as charged.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

[2] Eskridge stipulated to his prior felony conviction, so possession was the only element of possession of a firearm by a felon that the jury needed to decide.

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

Samuel A. Christensen
Clerk of Court of Appeals