STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v. Case No. 2015AP000093 CR

STEVEN E. STEFFEK,

Defendant-Appellant.

ON NOTICE OF APPEAL TO REVIEW A DECISION AND ORDER DENYING MOTION FOR ENTRY OF JUDGMENT OF ACQUITTAL ENTERED IN THE CIRCUIT COURT FOR WINNEBAGO COUNTY, THE HONORABLE DANIEL J. BISSETT, PRESIDING

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

Thomas P. Grieve
Attorney for Defendant-Appellant
State Bar No. 1072804

Grieve Law, LLC
The Columns
1305 N. Barker Rd. Suite 5
Brookfield, WI 53045
Telephone: 262-786-7100

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ISSUE PRESENTED

I. Did the Circuit Court err when it found, beyond a reasonable doubt, that Mr. Steffek endangered safety by negligent handling of a dangerous weapon, as a party to a crime?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Neither Oral Argument nor Publication is requested.

STATEMENT OF THE CASE

On May 28th, 2012, Memorial Day, Brad Fuss, who resides at 6896 Sunset Trail, in the Township of Winneconne, Winnebago County, Wisconsin, heard some gunfire to the East. R58:60. On June 3, 2012 Matthew L. Sagorac, who resides at 6902 Sunset Trail, in the Township of Winneconne, Winnebago County, Wisconsin, returned home from a week-long vacation. R58:79. Brad Fuss told Matthew Sagorac's wife that he heard shooting over the holiday weekend and that he heard a loud whack. R58:82. Matthew Sagorac proceeded to find a bullet in one of the wooden rocking chairs located on his back porch. R58:96. Matthew Sagorac called the

police on June 3, 2012, upon seeing the bullet. Officer Kyle Schoonover responded to the call.

As part of his investigation, Officer Schoonover interviewed neighbors including Mr. Steffek. When Officer Schoonover approached Mr. Steffek's house on June 3rd, 2012, Mr. Steffek asked if he was there for his shooting guns again. R58:99. Mr. Steffek admitted that he was shooting guns on his property on May 28th, 2012 with his brother. R58:102.

Mr. Steffek has six years of military training at the National Guard with basic and infantry training at Fort Ord, California, and Fort Polk, Louisiana. R58:180. He owns numerous rifles and was shooting hownhill at his targets, while Mr. Fuss and Mr. Sagorac live in the distance to the side and above where Mr. Steffek was shooting. R58:183.

Mr. Steffek took Officer Schoonover to the area where he was shooting on his property. R58:99. Officer Schoonover stated that Mr. Steffek was shooting towards the West in a mostly flat field with uncut grass. A berm to stop bullets was not present, but there was a tree line at the end of the field. R58:101.

Mr. Steffek surrendered the gun that he was shooting on May 28th, 2012 to Officer Schoonover and the gun and the recovered bullet were tested by the State. The results of that testing revealed that the recovered bullet was not fired from Mr. Steffek's gun. R58:189.

Mr. Steffek was charged with Endangering Safety by Use of a Dangerous Weapon, as a Party to a Crime and Disorderly Conduct. On June 25, 2013, a jury found Mr. Steffek not guilty of Disorderly Conduct, but guilty of Endangering Safety by Use of a Dangerous Weapon, as a Party to a Crime. R58:243. Mr. Steffek was sentenced to 12 months of probation, to complete a hunter gun safety course and to pay restitution in the amount of $397.44. R59:7.

A post-conviction motion was heard on December 11, 2014 to which the Circuit Court denied reversal. Mr. Steffek appeals this post-conviction motion verdict affirming a guilty Endangering Safety by use of a Dangerous Weapon verdict.

ARGUMENT

I. The Circuit Court erred when it found guilt beyond a reasonable doubt that Mr. Steffek Endangering Safety by Negligent Handling of a Dangerous Weapon, Party to a Crime.

The evidence, even when viewed most favorable to the State, lacks probative value and force that no jury, acting reasonably, could have found guilt beyond a reasonable doubt that Mr. Steffek of Endangering Safety by Negligent Handling of a Dangerous Weapon, Party to a Crime. ***State v. Poellinger***, 153 Wis.2d 493, 507, 451 N.W.2d 752 (1990). Specifically, the State failed to present sufficient evidence that his conduct substantially endangered the safety of another. Mr. Steffek is therefore entitled to a judgment of acquittal on that count. ***State v. Miller***, 2009 WI App 111, ¶ 44, 320 Wis.2d 724, 772 N.W.2d 188 (the remedy for insufficiency of the evidence to support the conviction is to order a judgment of acquittal). Indeed, if the evidence is insufficient, the only remedy available to the court is to reverse the judgment of the Circuit Court, and the Double Jeopardy Clause of the Fifth Amendment precludes retrial. ***State***

v. Ivy, 119 Wis.2d 591, 608, 350 N.W.2d 622, 631 (1984) (citing ***Burks v. United States***, 437 U.S. 1, 18, 98 S.Ct. 2141, 2150, 57 L.Ed.2d 1 (1978)).

The evidence is insufficient in two related respects. First, there was no one in the zone of danger and thus no criminal negligence, which requires a high probability of death or great bodily harm. Second, party to a crime requires more than what the State relied upon, which is not criminal, but civil liability, founded upon two civil concepts inapplicable to this criminal case: *res ipsa loquitur* and landowner liability. Party to a crime requires more: actual aiding and abetting, a close causal nexus between the defendant's overt acts and the alleged crime.

1. ZONE OF DANGER

To convict Mr. Steffek, the State had to prove three elements (six, including the three parts to criminal negligence):

1. Mr. Steffek operated or handled a dangerous weapon.
2. Mr. Steffek operated or handled a dangerous weapon

in a criminally negligent manner.

3. Mr. Steffek operated or handled a dangerous weapon in a criminally negligent manner by endangering the safety of another [the next three elements define criminal negligence].
    a. Mr. Steffek's operating or handling a dangerous weapon created a risk of death or great bodily harm.
    b. The risk of death or great bodily harm was unreasonable and substantial.
    c. Mr. Steffek should have been aware that his operating or handling of a dangerous weapon created the unreasonable and substantial risk of death or great bodily harm.

Wis. Stat. §§ 941.20(1)(a), 939.25. The State charged the offense as Party to a Crime, which will be addressed later.

The focus of criminal negligence is thus on the defendant's conduct, not on the opinion and feelings of third party (*e.g.*, alleged victim). This is an objective, not subjective, standard. It is "ordinary negligence to a high degree, consisting of *conduct* that

the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another [.]" Wis. Stat. § 939.25(1) (emphasis added). "In criminal negligence cases, the emphasis is on the conduct[.]" ***State v. Lindvig***, 205 Wis.2d 100, 105, 555 N.W.2d 197 (Ct. App. 1996). "[T]he relevant inquiry is whether a reasonable person, under the same or similar circumstances, would realize that the *conduct* creates a substantial and unreasonable risk of death or great bodily harm." ***Id.*** (emphasis added). Criminal negligence is "*conduct* that not only creates an unreasonable risk of bodily harm to another, but also involves a high degree of probability that substantial harm will result to such other person." The Circuit Court stated that the emphasis is on the conduct and not the actor's state of mind, but the State failed to prove that Mr. Steffek's conduct was negligent. Mr. Steffek's shooting range is downgrade and has a sand pail filled with sand behind a target to stop the bullets. (R58:181) There was testimony there is a tree line past the targets to stop bullets as well. (R58:181) While a backdrop was not present, Mr. Steffek is properly trained and

knowledgeable in gun safety and shooting techniques. Mr. Steffek testified that the Mr. Sagorac's property is to the North and in order to hit his house, Mr. Steffek would have had to turn his body in that direction. (R58:190) The Circuit Court refers to Mr. Fuss' degree of concern after hearing gun shots. Mr. Fuss has his family go inside for a brief time after hearing the gun shots, but he could not pin point who was shooting or what property the shots were coming from. He could only provide a generalization of direction. The Court also refers to previous encounters with similar types of discharge of weapons, but this was a couple years prior to the current scenario. If Mr. Steffek had been told by the police recently or even within the past year, then this could be seen as a similar previous encounter, but the jury heard testimony that the previous encounters were back in 2006. (R58:161) Mrs. Steffek testified he had not heard from nor seen Mr. Sagorac or Mr. Fuss, his neighbors, since 2006. (R58:161) Mr. Steffek purchased the property around 2006 so he could shoot his guns on a regular basis, but the only incident prior to this one

where a neighbor felt concerned was back in 2006. There was also testimony that many people hunt in the local area. (R58:191)

As discussed at greater length below in the section on Party to a Crime, the State proved little about Mr. Steffek's actual conduct on May 28, 2012, that created a high probability of death or great bodily harm. Critically missing from the evidence that the jury heard is proof beyond a reasonable doubt that Mr. Steffek's conduct was criminally negligent, specifically regarding these two elements of criminal negligence:

1. Mr. Steffek's operating or handling a dangerous weapon created a risk of death or great bodily harm.
2. The risk of death or great bodily harm was unreasonable and substantial.

The State had to prove that Mr. Steffek's hosting the shooting party, and the shooting that then occurred (including Mr. Steffek's own shooting), created this unreasonable and substantial risk of death or great

bodily harm. But such a risk to whom exactly? It is undisputed that the neighbor, Mr. Sagorac, in whose chair the bullet was found lodged, was not home that weekend, nor was his family. *See*, *e.g.*, Testimony of Mr. Sagorac, (R58:81); Testimony of Mr. Fuss, (R58:67). There was no proof that there was a single man, woman, child, or beast on Mr. Sagorac's porch, or at his home, or in his yard, or anywhere on his property. Therefore there was no risk of death or great bodily harm that was indicated let alone proved by the State as required by the elements: no one was in the zone of danger.

Instead, the State had to rely on the other neighbor, Mr. Fuss. Mr. Fuss testified that he was not on the Sagorac property that day, so he had not been in the zone of danger there (*e.g.*, he was not sitting on the Sagorac porch and barely dodged the bullet). After the gunfire he "did not walk on his [Sagorac's] property and inspect it." (R58:67). That day Mr. Fuss also did not, as he had once before, go to the Steffek property to talk to Mr. Steffek about the shooting. Even if he had gone to the Steffek's property to respond and thereby possibly put himself in the line of

fire, "[t]he gunfire was for a short term and it quit." (R58:68). Accordingly, there was no risk of death or great bodily harm to Mr. Fuss once the shooting had ceased. There was also no evidence that on May 28, 2012, any bullets entered the Fuss property. There is simply no indication or proof that Mr. Fuss or his family was in harm's way during the incident in question.

The only even slightly probable risk that the jury heard was to Mr. Fuss and his family on the Fuss property in the past. There was duly admitted Other Acts evidence of *one* prior occasion--Mr. Fuss believed to be 2011--in which he was outside with his wife planting flowers, and he claimed that shots had "passed into and through [his own] yard." (R58:64). However, the jury heard no further details about these alleged shots. No bullets retrieved from the Fuss property, nothing struck or damaged, not a porch chair or a blade of grass. No testimony on how exactly Mr. Fuss could tell that shots passed "into" and "through" his yard. Did he actually see a speeding bullet pass through his property? Or at least did he see the bullet impact,

e.g., kick up dirt when hitting his yard (perhaps this is was "into" his yard means?). Or did he simply hear gunfire and assume from the direction of the sound that it came from Mr. Steffek's property? There was also no testimony how close Mr. Fuss or his wife was to these bullets that passed "into" and "through" his yard. All the jury heard was that he was outside planting flowers, perhaps close to his residence. No evidence that he or his wife had ever actually been in the line of fire.

Thus, the jury had very little information about this prior incident, so it would be speculation, not proof beyond a reasonable doubt, that in 2011 he or his family had been in the zone of danger--that Mr. Steffek's prior shooting party created an unreasonable and substantial risk of death or great bodily harm. It would be speculation that Mr. Steffek had created a *high probability* of death or great bodily harm. The standard is objective, not subjective: it is not enough that Mr. Fuss believed that he and his family were in harm's way.

It is then speculation stacked on speculation that in 2012 Mr. Fuss and his family, who were outside once again, were at that time in the zone of danger. There is even less evidence of a *high probability* of death or great bodily harm in 2012: not bullets passing "into" and "through" his own yard, but a bullet hitting a rural neighbor's house. This is not the case of downtown apartments or a motel with front doors not that many feet apart, and a drive-by wildly spraying bullets that have a very real chance of hitting multiple residences. This is the case of large lots in the country. What is objective and undisputed is that despite the prior shooting incident and despite being "concerned for [his] safety," Mr. Fuss did not even bother to call the police on May 28, 2012. (R58:68). His actions, more precisely his inaction, speaks volumes. A reasonable person in his position who faced a *high probability* of death or great bodily harm would have called the police. Likewise, no reasonable jury could find beyond a reasonable doubt that on May 28, 2012, anyone--not Mr. Fuss, not his family--was actually in the zone of danger. There was no

unreasonable and substantial risk of death or great bodily harm, and so insufficient evidence to prove these elements of the charged offense.

2. PARTY TO A CRIME

The State also failed to present sufficient evidence to support a finding beyond a reasonable doubt of the elements of party to a crime. Party to a crime requires more than civil liability, more than *res ipsa loquitur* and landowner liability. There must have been aiding and abetting, a close causal nexus between the defendant's overt acts and the alleged crime.

a. *Res ipsa loquitur*

In opening statements, the State stipulated that "the bullet that was lodged in the deck chair did not come from the gun that was handed over to the officers" by Mr. Steffek. (R58:52). The State admitted "so I can't prove which of the defendant's guns this bullet came from, whether it was the defendant's gun or his brother's gun, and whether it was the defendant or his brother holding the gun at the time." (R58:52). The State reiterated: "as I said, I can't prove who shot

the gun and what gun it came from." (R58:53). Rather, the State claimed that Mr. Steffek was party to the crime because he "hosted his brother out to shoot in this direction of these houses without a backdrop after having knowledge that he's shooting into neighbor's properties." (R58:53).

In closing arguments, the State admitted, "Like I told you in my opening statement, I can't prove what gun was used to shoot this bullet, whether it was one of the defendant's guns." (R58:223). And then: "I don't know whether it was him [sic] or his brother that [sic] actually shot the gun that ended up with the bullet in the chair." (R58:223). In rebuttal, the State asserted flatly: "He's party to the crime. He hosted this event." (R58:235). And then: "He created an unreasonable risk when he knowingly hosted a shooting event knowing that he's shooting into neighboring properties." (R58:235).

So a bullet was found in a lawn chair that showed signs of damage. Lab testing proved that the bullet was fired from a gun. But the State did not, nor could not,

prove who shot the bullet nor what rifle was used to fire the bullet. But the bullet did not hit the chair on its own, just as surgical sponges or instruments normally do not remain in the abdomen of patients post-surgery, and automobiles normally do not hit stationary objects unless they themselves are in movement. The situation speaks for itself: *someone* must have fired that bullet, and that unknown someone must have somehow been negligent in doing so.

Careful research has revealed no criminal case in which courts have applied this torts theory of ordinary negligence to the heightened criminal negligence standard--no doubt because the standard of proof is not mere preponderance but beyond a reasonable doubt. *See also* ***Hart v. State***, 75 Wis.2d at 383 n.4 (quoting Comments, Judiciary Committee Report on The Criminal Code (Wis. Legislative Council 1953), sec. 339.25).

> The difference between a high degree of negligence and ordinary negligence is one of degree. The primary function of the ordinary negligence concept is determining whether a person should be required to pay damages. The function of the negligence concept in the criminal

> law is in determining the sort of conduct which is, although inadvertent, sufficiently dangerous to warrant criminal sanction. Since the emphasis in both cases is upon the conduct and not the state of mind of the actor, it follows that the distinction should be based upon the dangerousness of the conduct; that is, for a high degree of negligence the conduct must contain a **greater risk of harm than is necessary to form a basis for tort liability only** [emphasis added in bold].

Perhaps Mr. Steffek fired a different rifle, one that the State failed to test. Perhaps Mr. Steffek's brother fired the bullet, using a rifle other than the rifle that was tested. But though he was on the State's witness list, the State declined to call the brother to testify. Perhaps the shooter was some other unknown third person at the shooting event or even someone who had nothing to do with the shooting event altogether. However, none of these possibilities are reasonable inferences deduced from actual evidence that the State presented to the jury. All the State has is that a bullet was found on a certain day that was lodged in a chair. The jury must then extrapolate a timeline as to when the bullet got there before then being asked to

convict somehow based on how, with no evidence offered to support the "how." Relying on *res ipsa* to convict invites too much jury speculation, and with such speculation, there is ample room for reasonable doubt.

b. Landowner/Premise Liability

Similar to the torts theory of *res ipsa loquitur*, the State relies on another civil concept that should not apply in a criminal case: landowner liability. In both opening and closing statements, the State hammered the point that Mr. Steffek hosted the shooting event on his land. Behold the *ipse dixit*: "He's party to the crime. He hosted this event." (R58:235). As such, following the State's logic, Mr. Steffek should be responsible not just for civil damages, but for criminal penalties, for whatever happened during the shooting party. He hosted the party; he must be party to the crime that happened at or because of the party. Just as with *res ipsa loquitur*, there is no ascertainable criminal case in which courts have applied this torts theory of ordinary negligence to the heightened criminal negligence standard.

This absence of criminal case law for the "negligent" landowner is likely because of the required draconian results. What if one of Mr. Steffek's guests had struck a neighbor and caused injury? Should not he, as host, be charged with violating Wis. Stat. § 940.24 Injury by negligent handling of dangerous weapon, explosives or fire, PTAC--a felony? The intent element for this offense is the same as that of the crime of Mr. Steffek's conviction, criminal negligence. See Judicial Council Note, 1988: The culpable mental state is criminal negligence. See § 939.25 and the NOTE thereto. [Bill 191-S] If the passer-by is killed, why not a charge and conviction for violating § 940.08 Homicide by negligent handling of dangerous weapon, explosives or fire--PTAC, a more serious felony? Why should there not be the same result--a felony prosecution--if a parent allows his son to shoot at a can in the backyard with a pellet gun without adequate backstop, and the son accidentally shoots and injures someone? *See* ***Rafferty v. State***, 29 Wis.2d 470, 477, 138 N.W.2d 741, 745 (1966) ("We conclude that a pellet gun used as a compressed air weapon is a dangerous weapon

calculated or likely to produce great bodily harm"); ***Gerlat v. Christianson***, 13 Wis.2d 31, 37, 108 N.W.2d 194, 197 (1961) ("the trial court properly held that the classification of an air gun as a toy has been changed by § 940.24 and § 941.20, Stats. which put air guns in the same category as firearms.") The civil negligence involving guns hinged on usual tort concepts: level of control and thus the standard of care that the landowner/parent exercised (or failed to exercise) over the gun. ***Id.*** at 37 ("the father's negligence does not depend on the character of the instrument by which the injury is inflicted but on the evidence from which it can be reasonably concluded that he failed to exercise such control as he had over the boy's use of the gun.")

c. Aiding and Abetting

In contrast to common law of civil negligence, the party to the crime statute requires more than merely a lack of proper oversight. Party to a crime is not passive, but active conduct, closely enough connected with the crime. To use a sports metaphor that the

courts employ, it is not watching from the sidelines, but actually playing in the game.

A leading case involving party to a crime and criminal negligence is ***State v. Asfoor,*** 75 Wis.2d 411, 249 N.W.2d 529 (1977), in which the Wisconsin Supreme Court affirmed the conviction being a party to the crime of injury by negligent use of a weapon.

The facts: Bernard Kutil severely beat Anthony Schubert and another person. Schubert then went over to the apartment of the defendant, Ronald Asfoor, who was there with his girlfriend and one Andrew Jewell. Schubert told Jewell that he "wanted to see (Kutil) get shot." ***Id.*** at 420. When Schubert said this, Asfoor was standing close by. At first Asfoor seemed nervous with this plan, but he agreed to drive to the motel where Kutil was staying. Jewell went into another room, got a shotgun and a .357 Magnum pistol, and took them outside to Asfoor's car. Jewell put the shotgun in the back seat of Asfoor's convertible, and Schubert took the handgun. Asfoor then followed both Jewell and Schubert, and when all there were in the car, Asfoor took the

pistol from Schubert and put in on the floorboard. Asfoor then drove the car to the motel where Kutil was staying. When Kutil came out onto the balcony, Asfoor got out of the car and said, "Is that smart...punk?" ***Id.*** at 421. Schubert and Jewell then both exited the vehicle. Jewell had the shotgun, and Schubert had the pistol, which he pointed at Kutil. Asfoor forcibly disarmed Schubert and was returning to the car when Jewell shot Kutil with the shotgun, striking him in both legs and the left wrist. Before the police arrived, Jewell, Schubert, and Asfoor agreed that they would say that they found Kutil going through the car.

After a jury trial, Asfoor raised several issues on appeal, including the sufficiency of the evidence and whether the crime of injury by negligent use of a weapon committed by intentionally aiding and abetting requires specific intent and whether this is a crime known to law. The court rejected all these arguments. Regarding specific intent, the court held that a person is "presumed to intend the natural consequences of his act." ***Id.*** at 428, citing ***State v. Cydzik***, 60 Wis.2d 683, 211 N.W.2d 421 (1973), which upheld a conviction

for aiding and abetting first degree murder for a person who participated in an armed robbery that went bad. Asfoor, like Cydzik, was no mere stander-by:

> He intended his acts; knowing his friends' plans to do 'hostile damage' to the victim, he voluntarily drove the car to the Holiday Inn. His acts demonstrated that if assistance became necessary in the commission of a crime he was ready to provide it. In fact, he did provide assistance by allowing the use of one of his guns and by driving Schubert and Jewell to the motel. Without his assistance the crime could not have taken place.

Id. at 428. The court then borrowed the sports metaphor from ***Cydzik***: Asfoor was not "sitting on the bench. . . . He was in the game . . . playing a position or performing a function as to the commission" of the crime. ***Id.*** (internal citation omitted).

The court also rejected the argument that one cannot intend criminal negligence:

> It is true that intent and negligence are mutually exclusive and one cannot intend to injure someone by negligent conduct. However, there are often many intentional acts which lead to an injury caused by negligence.

> For example, the negligent driver of a car involved in a head-on collision intended to drive his automobile. He also intended to pass the slow moving vehicle in front of him, but he did not intend to hit the oncoming car. His intentional acts would not prevent him from being found negligent if he failed to exercise proper lookout or was driving too fast.

Id. at 428-9 (spacing added). In the case at hand, the court found intentional acts:

> He consciously agreed to aid his companions when he knew they were planning a crime. He took overt actions to further their conduct. He intended to place the handgun on the floorboard of the car. He was conscious that the shotgun was in the back seat. He in fact did intentionally aid and abet the actions of his companions.
>
> All these intentional acts led to an injury when one of those he aided acted negligently while using a weapon. Asfoor, like Cydzik, is responsible for the natural consequences of his acts. He intended to participate in the manner he did and these acts aided and abetted.

Id. at 429. The court further noted: "While Asfoor may have done nothing to aid Jewell at the instant the crime was committed, he had earlier acted in such a way as to assist Jewell. Various intentional acts may lead

to an unintentional injury caused by negligence. The question is whether the defendant's acts were a proximate cause of the victim's injuries." ***Id***. at 434. Finding such a proximate causal nexus, the court found sufficient evidence to support the jury verdict.

Here there is no such proximate causal nexus between Mr. Steffek's intentional conduct and the "injury," a bullet lodged in a chair in his neighbor's property. Unlike Asfoor, Mr. Steffek was not part of a conspiracy to do any "hostile damage" to his neighbor's property. Instead, Mr. Steffek's overt acts on the day of the incident were inviting other people over for a shooting party and providing a target. To use the sports metaphor from ***Asfoor***/***Cydzik***, as the host and organizer, Mr. Steffek was more like the equipment manager or coach than a key player on the field. He set up the tables with the guns laid out, and then "instruct[s] everybody how we're going to shoot." (R58:196). Three people shoot at the same time, and he is "watching." (R58:106). He also did shoot that day, so he was not simply a spectator, though displaying

nowhere near the same involved conduct as Asfoor. (R58:180).

Mr. Steffek did do intentional acts, but lacking in evidence presented to the jury are overt actions to encourage, condone, or blithely ignore whoever may have shot so far astray of the target to reach the neighbor's property. The law holds Mr. Steffek liable for the natural and probable consequences of his actions, but not for the improbable consequences, literally a long shot, and that is assuming that the bullet lodged in the chair even originated from the Steffek shooting party. Unlike the example cited in ***Asfoor***, he did not himself do, or aid another in, the firearms equivalent of striking an oncoming car by passing a slow-moving vehicle because he failed to exercise proper lookout or he was driving too fast. Passing on the left is inherently, categorically risky, and the proximate causal nexus between the driver, his conduct, and the consequent crash is clear. Not so here, where, to follow the motor vehicle analogy, the State could prove that Mr. Steffek provided "cars to drive," and that Mr. Steffek was one of many "driving"

that day, and that there was a "crash." But the State itself conceded that it could not prove who "drove the car" or even "what car" was involved in the "crash." This is not the close connection for criminal negligence, party to a crime that ***Asfoor*** found to sustain the sufficiency of evidence for a conviction.

CONCLUSION

With the limited evidence presented, no rational jury would have found beyond a reasonable doubt that Mr. Steffek committed the crime of conviction. No one was in the zone of danger, so there was no high probability of death or great bodily harm. Likewise, there was not sufficient proof that Mr. Steffek overtly acted to aid or abet any criminal negligence, so he was not party to a crime. Mr. Steffek is therefore entitled to a judgment of acquittal, and the Double Jeopardy Clause forbids a retrial.

For the foregoing reasons, Steven Steffek respectfully requests a reversal on the Post-Conviction Motion from December 11, 2014.

Dated this 20th day of April, 2015.

Respectfully Submitted,

THOMAS P. GRIEVE
Attorney for Defendant-Appellant
State Bar No. 1072804

Grieve Law, LLC
The Columns
1305 N. Barker Rd. Suite 5
Brookfield, WI 53045
Telephone: 262-786-7100

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FORM AND LENGTH CERTIFICATION

I hereby certify this brief conforms to the rules contained in section 809.19(8)(b) of the Wisconsin Statutes for a brief and appendix produced with a monospaced font. This brief conforms to length limitations set forth in Wis. Stat. Rule 809.19(8)(c)as the brief is less than 50 pages.

Respectfully Submitted,

THOMAS P. GRIEVE
Attorney for Defendant-Appellant
State Bar No. 1072804

Grieve Law, LLC
The Columns
1305 N. Barker Rd. Suite 5
Brookfield, WI 53045
Telephone: 262-786-7100

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CERTIFICATION OF ELECTRONIC FILING

I hereby certify, pursuant to Rule 809.19(12)(f), that the text of the electronic copy of this brief is identical to the text of the paper copy of this brief.

Respectfully Submitted,

THOMAS P. GRIEVE
Attorney for Defendant-Appellant
State Bar No. 1072804

Grieve Law, LLC
The Columns
1305 N. Barker Rd. Suite 5
Brookfield, WI 53045
Telephone: 262-786-7100