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STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT II

Case No. 2015AP000093 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

STEVEN E. STEFFEK,

Defendant-Appellant.

**ON APPEAL FROM ORDER DENYING MOTION FOR
ACQUITTAL ENTERED IN THE CIRCUIT COURT FOR
WINNEBAGO COUNTY, WISCONSIN, THE
HONORABLE DANIEL BISSETT, CIRCUIT JUDGE,
PRESIDING**

PLAINTIFF-RESPONDENT'S BRIEF

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the trial court erred when it found sufficient evidence to convict the defendant of endangering safety by use of a weapon.

Trial Court Answered: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State of Wisconsin, plaintiff-respondent, does not request oral argument or publication of this court's decision and opinion.

STATEMENT OF THE CASE

On Memorial Day 2012, Bradley Fuss was installing an electric fence on his property when he heard gunfire striking his next-door-neighbor's building. R58:P60. Fuss' family was present and he immediately told them all to go inside. *Id.* Fuss determined the shooting was coming from the direction of Mr. Steffek's property. *Id.*

Fuss had previously informed Mr. Steffek that shooting from his property endangered occupants of the Fuss and Sagorac residences. R58:P64. On this previous occasion, Steffek responded to Fuss' concerns that he (Steffek) might injure or kill somebody shooting towards the Sagorac/Fuss residences with defiance and vulgarity. R58:PP65-66.

Soon after Memorial Day 2012, Mr. Sagorac returned from a vacation, and he found a bullet lodged in a deck chair. R58:P81. Sagorac also described prior event when bullet's from Mr. Steffek's residence "whiz[zed] through [his] yard." R58:P85.

Winnebago County Deputy Sheriff Kyle Schoonover responded to the call for service about

the Memorial Day shooting on June 3, 2012. Schoonover spoke to Mr. Steffek, who showed where he had hosted a shooting party. R58:PP99-100. There was no backstop or berm blocking bullets from travelling off the property. *Id.* Mr. Steffek admitted officers had been to his property before in the past concerning his shooting practices. R58:P103.

Winnebago County Deputy Sheriff Clint Czerwinski testified that the type of gun the defendant and his brother were firing have a range of 8000 feet, and the distance between the Steffek and Sagorac properties was 2600 feet. R58:PP133-134. Czerwinski also testified that safe target shooting with this type of weapon would require a berm to prevent unintended bullet travel. R58:P136.

The jury found Mr. Steffek guilty of endangering safety by use of a weapon. R33.

At a post-conviction motion hearing on December 11, 2014, the Circuit Court found sufficient evidence to support the verdict. R60:P17.

ARGUMENT

I. Sufficient Evidence Supported Mr. Steffek's Conviction For Endangering Safety by Use of a Weapon.

A. Standard Of Appellate Review.

A challenge to the sufficiency of evidence in a criminal proceeding presents a question of law, reviewed de novo. *State v. Smith*, 2012 WI 91, ¶ 24.

This court must consider the evidence in the light most favorable to the State, and may reverse the conviction only if 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.” *State v. Poellinger*, 153 Wis. 2d 493, 507 (1990) (citation omitted); accord *Smith*, 2012 WI 91, ¶ 24. “[T]his court will uphold the conviction if there is any reasonable hypothesis that supports it.” *Smith*, 2012 WI 91, ¶ 24, citing *State v. Blair*, 164 Wis. 2d 64, 68 n.1, 473 N.W.2d 566 (Ct. App. 1991). Put another way, appellate courts must defer to reasonable inferences drawn by the fact finder from the evidence. See, e.g., *Smith*, 2012 WI 91, ¶¶ 28-33. This standard applies to both direct and circumstantial evidence cases. *Poellinger*, 153 Wis. 2d at 501. See also *State v. Mertes*, 2008 WI App 179, ¶ 11.

B. The Trial Evidence Fully Supported The Conclusion That Mr. Steffek Endangered Safety by Use of a Weapon.

Pattern Jury Instruction No. 1320 addresses the elements of endangering safety by use of a weapon. To convict the defendant, the State must prove:

1. The defendant operated or handled a dangerous weapon.
2. The defendant operated or handled a dangerous weapon in a manner constituting criminal negligence.
3. The defendant's operation or handling of a dangerous weapon in a criminally negligent manner endangered the safety of another.

"Criminal negligence" means:

- the defendant's operation or handling of a dangerous weapon created a risk of death or great bodily harm; and

- the risk of death or great bodily harm was unreasonable and substantial; and
- the defendant should have been aware that his operation or handling of a dangerous weapon created the unreasonable and substantial risk of death or great bodily harm.

This instruction was correctly modified by the “party to the crime” instruction, charging the jury they should convict if the defendant committed the offense “by either directly committing it, or by intentionally aiding and abetting the person who directly committed it.” R58:PP208-209.

Viewing the evidence in the light most favorable to the State, the defendant hosting a shooting event in a location he knew put other residences in harm’s way, is not evidence “so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt,” and the conviction should be affirmed.

CONCLUSION

Sufficient evidence supported the jury’s guilty verdict. This court should affirm this conviction.

Respectfully submitted May 6, 2015

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CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 826 words.

I further certify pursuant to Wis. Stat. § 809.19(b)(12)(f) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

I further certify that on the date of signature I routed the enclosed briefs to our office station for first class US Mail Postage to be affixed and mailed to:

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Dated: May 6, 2015

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