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STATE OF WISCONSIN :: COURT OF APPEALS - DISTRICT I

STATE OF WISCONSIN,

Plaintiff-Respondent,

Appeal No. 2017-AP-2045-CR

vs.

Trial No. 15-CF-2072

DEVON L. LOGGINS,

Defendant-Appellant.

Appeal from a judgment of conviction entered August 29, 2016 in the
Circuit Court of Milwaukee County,
Honorable Jeffrey A. Conen, Judge, presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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STATEMENT OF ISSUE

Whether the trial court erred in denying Mr. Loggins' request for a self-defense jury instruction.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Neither oral argument nor publication are requested in this appeal.

STATEMENT OF THE CASE

Procedural history

An amended criminal complaint filed June 28, 2015 charged Defendant-Appellant Devon L. Loggins with six counts: 2 counts of first degree reckless homicide in violation of Wis. Stat. §940.02(2), 3 counts of first degree recklessly endangering safety in violation of Wis. Stat. §941.30(1) and one count of felon in possession of a firearm in violation of Wis. Stat. §941.29. 3: 1-2.

The case was tried to a jury before the Honorable Jeffrey Conen on May 9-13, 2016. The jury returned verdicts of guilty on all counts.

A judgment dated July 6, 2016 imposed consecutive sentences aggregating 83 years imprisonment (56 years initial confinement and 27 years extended supervision). 96: 1-3.

A corrected judgment dated October 10, 2016 imposed concurrent and consecutive sentences aggregating 81 years imprisonment (55 years initial confinement and 26 years extended supervision). 109: 1-3.

On August 10, 2017 Mr. Loggins filed a

postconviction seeking to correct the record regarding polling of the jury. The court held a hearing on September 12, 2017, and heard testimony from a juror. 146: 1-6. The court entered an order dated September 13, 2017 denying relief from the convictions and sentences. 121: 1-2.

Mr. Loggins now appeals.

The offense

Events leading to fight and shooting

This case arose from a complex set of family relationships. Larry Jones, Jr. is the father of Damario Jones, the victim in count 1 (first degree reckless homicide). 139: 101-102, 112. Mr. Jones, Jr. has two surviving children, Larry Jones, III and Jasmine Jones, who both testified. 139: 102, 112. Larry Jones, Jr. was in a relationship for 9 or 10 years with Nessie Loggins, the mother of Defendant-Appellant Devon Loggins and Ladonna Loggins. 139: 102-103, 112-113. Ladonna Loggins is the girlfriend Damario Jones and has a child with him. 139: 103. Mario Granville is Devon Loggins' paternal half-brother (sometimes referred to as a stepbrother). 139: 103, 114; 142: 141.

On April 30, 2015, the day before the shooting, an incident occurred involving Larry Jones, Jr., Defendant

Devon Loggins and Mr. Loggins' half-brother Mario Granville. 139: 103-104; 142: 142-143. Mr. Granville and Mr. Loggins went to the home of Mr. Jones, Jr. and Mr. Loggins confronted Mr. Jones, Jr. about mistreatment of Mr. Loggins' mother Nessie Loggins (who is also Mr. Jones, Jr.'s girlfriend). 139: 104; 142: 142-143. During the course of this confrontation, Mr. Loggins punched Mr. Jones, Jr. once, causing a black eye. 139: 104; 142: 142-143. Mr. Loggins and Mr. Granville then left Mr. Jones, Jr.'s home. 139: 104-105; 142: 143.

News of this confrontation spread quickly among family members. Jasmine Jones, her uncle Montrell Burdine (victim in count 2, first degree reckless homicide) and some friends were at the Ace High bar near 30th Street and Lisbon. 139: 115. T.L. (victim in count 3, recklessly endangering safety) joined them at Ace High. 141: 88-89. Mr. Burdine received a telephone call from Damario Jones. 139: 115-116; 141: 89. From this call they learned that Jasmine's father, Larry Jones, Jr., "had got jumped on." 139: 116-117; 141: 89. Ms. Jones, Mr. Burdine and their friends then drove, using three cars, to the home of Larry Jones, Jr. 139: 116-118. T.L. also went to Larry Jones, Jr.'s home. 141: 90.

Upon arrival, Larry Jones, Jr. told what happened in his encounter with Devon Loggins. 139: 118. Ms. Jones telephoned her brother, Damario, and learned he was going to the home Damario shared with Ladonna Loggins and Devon Loggins at 3729 North 37th Street. 139: 118; 141: 6-7. Damario Jones had also telephoned Ladonna Loggins asking what had happened; Ms. Loggins told Damario Jones she would find out, and urged Mr. Jones to stay away. 141: 8-9.

Jasmine Jones drove with her friend to Devon Loggins' house. 139: 118.

D.N. (victim in court 5, recklessly endangering safety) received a telephone call from Damario Jones (a/k/a "Whoa") asking D.N. to meet him at 37th and Nash. 141: 35. During the call, Mr. Jones was "hysterical, crying, [and] yelling." 141: 35. D.N. and four of his friends drove in his van to 37th and Nash. 141: 36.

The fight

When Jasmine Jones arrived at Devon Jones' home, she saw Ladonna Loggins in her window, and Damario Jones and at least five companions were on the sidewalk in front of the house; these companions included victims D.B. (victim in count 4, recklessly endangering safety),

Montrell Burdine and D.N. (victim in count 5, recklessly endangering safety). 139: 119-120.

Many people were inside the house, including Ladonna Loggins, LaTonya Loggins, Laquisha Loggins, Defendant Devon Loggins and Mario Granville. 141: 8. At some point, someone banged on the door. 141: 9; 142: 103. Ladonna Loggins testified it was Damario Jones. 141: 9. However, this appears to be an assumption, for Ladonna later stated when she and Devon Loggins went downstairs to open the door, no one was there. 141: 20. Laquisha Loggins also testified when Ladonna opened the door, no one was there. 142: 103. Devon Loggins testified that he went downstairs after hearing a loud bang at the back door, but when he opened the door, no one was there. 142: 144. Laquisha Loggins testified that Damario Jones called Ladonna Loggins and said he wanted Devon Loggins to come out and fight. 142: 103-104. Yelling was exchanged between people on the upstairs front porch of the house and Damario Jones and other people down in front of the house. 141: 37, 46, 52, 66-67.

Devon Loggins, accompanied by others, went out the back door and around to the front yard where Damario Jones and his friends were. 139: 120-121; 140: 31; 141:

11; 142: 106-107. Damario Jones and Devon Loggins started fighting in the front yard. 142: 108. Devon Loggins testified that the fighting started when Damario Jones swung at him and stated: “Nigga, you hit my daddy.” 142: 147, 148.

Initially, just Damario Jones and Devon Loggins fought. 141: 52, 68-69, 81, 99; 142: 87, 124. Ladonna Loggins and Laquisha Loggins tried to separate the fighters. 139: 33; 141: 22. At some point, the fight moved from the front yard towards the street. 139: 33; 142: 125. Devon Loggins was getting the best of Damario Jones. 142: 108-109. Devon Loggins testified that he ducked Damario Jones’ initial swing, he swung three times at Damario Jones, causing him to fall, at which point all the people who were behind Damario Jones started swinging at Devon Loggins. 142: 150.

Other witnesses confirmed that numerous people jumped on Devon Loggins. Ladonna Loggins estimated that 30 people were on her brother during the melee. 141: 23. D.B. noted that while the fight was initially between Damario Jones and Devon Loggins, at some point “everybody started fighting.” 141: 54. Sammy Malone described how the fight between two men escalated as

more people came from the house and more of Damario Jones' partisans entered "a big brawl." 141: 69. Ravon Johnson, who had come to the scene with Damario Jones, observed that the fight "looked like it was more the crowd we came with than it was the crowd with Devon." 141: 97, 101. Laquisha Loggins stated that once Devon Loggins started "getting the best" of Damario Jones, "that's when all the guys jumped on Devon." 142: 108-109.

The gun and the shooting

Various accounts explain how Devon Loggins came to possess a gun. Ladonna Loggins testified that Mr. Loggins did not have a gun when he left the house, as she does not allow guns in her house. 141: 22. Latonya Loggins also testified that Devon Loggins did not have a gun when in the house. 142: 126.

Several witnesses testified that the gun was obtained from a car, although only one witness testified to this from personal observation. T.L. testified that he saw two persons go to a car, but did not see anyone get a gun. 141: 92. T.L. "guesses" that Montrell Burdine saw someone go in a car and get a gun. 141: 83. Sammy Malone testified he "heard out of nowhere" that someone was going to get a gun, but did not actually see anyone get

a gun. 141: 69-70. The only witness who testified from direct observation on this point was Larry Jones III, who testified he saw Devon Loggins go to a car and get a gun. 142: 95-96. On cross-examination, Mr. Jones, III was impeached. He admitted that he had suffered a head injury and has memory problems. 142: 94-95. Mr. Jones, III testified he did not recall telling police a different account that Mario Granville had fired shots and then either gave the gun to Devon Loggins or Devon Loggins grabbed the gun from Mr. Granville. 142: 97.

Devon Loggins and several other witnesses testified that Mr. Loggins obtained the gun after it was dropped to the pavement by another person during the fight. Latonya Loggins testified that after the fight moved from the front yard to the street, she heard and saw a gun hit the pavement; it fell from a dude in a gray hoodie that she did not know. 142: 126. Laquisha Loggins heard an object hit the ground, but did not see Mr. Loggins pick up a gun. 142: 109-110, 114. During the melee, Ladonna Loggins heard something metal hit the ground, but did not see it. 141: 24. Mr. Loggins testified that after being punched by two persons, a third person in a gray hoodie swung at him; Mr. Loggins ducked this punch, saw a gun drop to the ground

from underneath the hoodie, and grabbed the gun. 142: 140. Mr. Loggins then fired shots. 139: 124; 141: 13-14, 55, 91, 102. Devon Loggins testified that he was scared, and that his intent when shooting to get the people off on him. 142: 141. The fight was not wrestling; they were “beating the crap out of me.” 142: 149. Mr. Loggins suffered bruises to his ribs and face, and when he later removed his pony tail, eleven of his dreads fell to the floor. 142: 156-157.

Mario Granville’s role

Testimony was inconsistent regarding whether Mario Granville also had a gun and fired shots during the incident. Jasmine Jones testified that when the fight started, she saw Mr. Granville on the scene, but saw only Devon Loggins with a gun. 139: 129-130. However, after shots were fired and she fled and drove around the block, Jasmine Jones returned to the scene and saw Mario Granville (“Rio”) shooting, and could see the recoil in his arm. 140: 35-37. Mario Granville was the person she saw shoot her brother Damario while Damario was on the ground. 140: 41. Kenya Moseby also saw Mr. Granville on the scene, but never saw him with a gun. 140: 15. Ravon Johnson saw Mario Granville raise his arm and

shoot at Montrell Burdine as he fled. 141: 102, 105-106.

The investigation and aftermath

Police investigated 3 scenes: 37th and Nash, 38th and Nash, and 35th and Vienna. 140: 54. At 38th and Nash police found and rendered aid to victim Montrell Burdine, who was in great pain and unable to answer questions. 139: 97-99; 140: 89-90. Mr. Burdine died due to gunshot wounds. 142: 22-25. At 37th and Nash, police found an unconscious unidentified black male, who was apparently Damario Jones, and conducted CPR without effect. 140: 43-44, 58-59. Damario Jones died from 3 gunshot wounds. 142: 8-11. Also near 37th and Nash, police found D.B. on a curb with a gunshot wound to the leg. 140: 47. Police found T.L. limping near 35th and Vienna with a gunshot wound to the thigh. 140: 50-51. Victim D.N. drove himself from the scene. 141: 42.

In the middle of the street in front of 3627A North 37th Street, police found 15 9mm casings. 140: 55, 57, 64-65. Shotspotter audio evidence indicated that 15 shots were fired at 3628 North 37th street in an 8-second span; 40 seconds later, a single shot was fired at 3635 North 37th Street. 142: 39-43, 48. A tool-mark examiner testified that the 15 9mm casings recovered were all fired from the same

gun. 142: 59. However, two bullets submitted for testing could not have been fired from the same gun. 142: 60-61. Police did not find or recover any gun at the scene or during the investigation. 140: 78.

Self-defense instruction

At the conclusion of the evidence, the court held a conference in chambers off the record. Apx. 101; 142: 165. In recounting this conference, the court stated:

It's my understanding that the charges still remain as first-degree reckless homicide, two counts, and three counts of first-degree recklessly endangering safety. There is – we have to have some determination of – I don't see how we go away from this, that there is a self-defense argument. *There is no legal self-defense argument to reckless conduct.* It's only to intentional conduct. So that all needs to be researched.

Apx. 102-103; 142: 166-167 (emphasis added). The court adjourned for the day, scheduling a conference for the following morning to address jury instructions. Apx. 103; 142: 167.

The next day, Mr. Loggins' counsel filed a Westlaw printout of the unpublished decision in *State v. Green*, 15-AP-1126-CR. 27: 1-9. The slip opinion in *State v. Green* is in the appendix to this brief. Apx. 113-132. Counsel

cited the *Green* opinion, which at that time was only 2 weeks old, to show that self-defense is allowed in reckless homicide cases. Apx. 106; 143: 4. Counsel asserted that the evidence was sufficient for a self-defense instruction on the charges of first degree reckless homicide and first degree recklessly endangering safety, and also on the lesser-included offenses (requested by the prosecutor) of second degree reckless homicide and second degree recklessly endangering safety. Apx. 106: 143: 4.

The prosecutor argued that Mr. Loggins had no statutory right to a self-defense instruction, and cited Wis. Stat. §939.48(3). Apx. 106-107; 143: 4-5. Under this provision, the prosecutor argued:

The privilege of self-defense extends not only to the intentional infliction of harm upon a real or apparent wrongdoer, but also to the unintended infliction of harm upon a third person, except that if the unintended infliction of harm amongst [sic] the crime of first-degree or second-degree reckless homicide, . . . the actor is liable for whichever one of those crimes is committed. In other words, you do not have a right of self-defense in a reckless crime to a third person.

Apx. 106-107; 143: 4-5.

From this legal perspective, the prosecutor asserted that the homicide victims are third persons falling outside

the scope of self-defense:

And viewing the evidence in the light most favorable to the defendant, which would be his testimony, at the moment he starts shooting, he's just shooting indiscriminately at anybody. And his testimony again viewing it in the light most favorable to him is that there is some guy with a gray hoodie. Doesn't identify him as Damarion Jones or Montrell Burdine. He doesn't even know the person. The evidence is he knows them. He just starts shooting indiscriminately. The, on the homicide, would fall in the class of my view a third person. And statutorily, you have no self-defense statutory right with respect to those two homicides.

Apx. 107; 143: 5.

Regarding the recklessly endangering safety charges, the prosecutor stated the statute (Wis. Stat. §939.48(3)) does not apply, but that Mr. Loggins nonetheless should not receive a self-defense instruction. Apx. 107-108; 143: 5-6. He asserted that under the facts viewed most favorably to Mr. Loggins, Mr. Loggins "is essentially saying, I am afraid of an unknown person wearing a gray hoodie who took a swing at me, so, therefore, I just started firing at anybody." Apx. 108; 143: 6.

The court agreed with the prosecutor "regarding the

homicide charges, that self-defense is not available pursuant to statute.” Apx. 108; 143: 6. The court further found that “there is no real fear of great bodily harm or death” arising from the melee:

[T]he defendant was concerned about somebody in a gray hoodie, but it’s a nondescript person, and 15 shots were fired. So if you take the evidence in the light most favorable to the defense, and that is his own testimony, there is no self-defense here. Therefore, the Court will not give self-defense.

Apx. 108-109; 143: 6-7.

ARGUMENT

The trial court erred in denying Mr. Loggins' request for a self-defense jury instruction

A court's decision to submit a defense jury instruction is based on a review of the evidence; whether the evidence is sufficient to warrant giving a defense jury instruction is a question of law which is reviewed de novo. *State v. Head*, 2002 WI 99, ¶44, 255 Wis.2d 194, 648 N.W.2d 413. Failure to give a defense instruction which is supported by the evidence is error. *Head*, ¶44.

In Wisconsin, the scope of the defense of self-defense is defined by statute:

(1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

* * * * *

(3) The privilege of self-defense extends not only

to the intentional infliction of harm upon a real or apparent wrongdoer, but also to the unintended infliction of harm upon a 3rd person, except that if the unintended infliction of harm amounts to the crime of first-degree or 2nd-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, first-degree or 2nd-degree reckless injury or injury by negligent handling of dangerous weapon, explosives or fire, the actor is liable for whichever one of those crimes is committed.

Wis. Stat. §939.48(1) and (3).

A judge receiving a request for a self-defense jury instruction must consider the evidence in the most favorable light it will reasonably admit from the standpoint of the defendant. *State v. Stietz*, 2017 WI 58, ¶13, 369 Wis.2d 222, 880 N.W.2d 182. *Head*, ¶113. The defendant must only produce “‘some evidence’” in support of self-defense; this sets a “‘low bar’” that the accused must meet. *Stietz*, ¶16. “Evidence satisfies the ‘some evidence’ quantum of evidence even if it is ‘weak, insufficient, inconsistent, or of doubtful credibility’ or ‘slight.’” *Stietz*, ¶17 (footnote omitted). Essential to a proper assessment of the evidence in support of a defendant’s request for a self-defense jury instruction is that the court not weigh the evidence:

Crucial to applying the "some evidence" standard is that a court is not to weigh the evidence. *State v. Mendoza*, 80 Wis. 2d 122, 152, 258 N.W.2d 260 (1977). A court does not "look to the totality of the evidence," as that "would require the court to weigh the evidence—accepting one version of facts, rejecting another—and thus invade the province of the jury." *Mendoza*, 80 Wis. 2d at 153; *Ross v. State*, 61 Wis. 2d 160, 172-73, 211 N.W.2d 827 (1973) ("This test does not call for a weighing of the evidence by the trial judge."). Rather, "the question of reasonableness of a person's actions and beliefs, when a claim of self-defense is asserted, is a question peculiarly within the province of the jury." *Maichle v. Jonovic*, 69 Wis. 2d 622, 630, 230 N.W.2d 789 (1975) (citing *Higgins v. Minagham*, 76 Wis. 298, 45 N.W. 127 (1890)).

Stietz, ¶18 (footnotes omitted).

The evidence shows that Devon Loggins was engaged in a physical fight with Damario Jones in the front yard of a house, which later moved into the street. While the fight started between just these two persons, each of them had persons in support present. When Mr. Loggins started to prevail in the fight, Mr. Jones supporters jumped in and attacked Mr. Loggins. After this occurred, Mr. Loggins fired shots.

Mr. Loggins testified to the events prompting him

to shoot:

[T]hey was still jumping on me, right. Somehow we end up like right outside the gate. We on the sidewalk. And some tall dude, he get to yelling, "hold on, wait, stop, stop, stop, 'yall stop." Everybody stop swinging on me. So I stopped swinging, too, cause I am tired. I was just fighting all these people for like at least four minutes straight. So I am tired. I'm like out of breath. Next thing you know, he punched me. Boom! When he punched me, some other dude over here, he punched me. Boom! It was another dud directly in front of me. Like I ain't see they punches coming. But the dude that was directly in front of me, he had on a gray sweater. He swung on me. I seen him swing so I ducked. When he swing, that's, I noticed the gun fell from under his hoodie. Once the gun fell from under his hoodie, I grabbed it. As soon as it hit the ground, I grabbed it. That's when somebody got to yelling, "He got a gun! He got a gun! He got a gun!" After I'm coming up off the ground, somebody kicked me. I think they was trying to kick me like in my arm because this the hand that I had the gun in. But they missed. They hit me right here. When they kicked me, I kind of like turned over. I just started pulling the trigger.

142: 150-151. Other witnesses confirmed that numerous persons entered the fight and attacked Mr. Loggins; one witness put the number of persons jumping on Mr. Loggins at 30.

In seeking to defeat Mr. Loggins' request for a self-

defense jury instruction, the prosecutor mischaracterized the evidence in several respects.

First, the prosecutor sought to portray the unidentified man in the gray hoodie as the sole threat to Mr. Loggins: “It is essentially saying, I am afraid of an unknown person wearing a gray hoodie who took a swing at me, so, therefore, I just started firing at anybody.” Apx. 108. 143: 6. The evidence, not just from Mr. Loggins, shows that he was under assault from numerous persons.

Second, the prosecutor asserted that as the man in the gray hoodie was the object of Mr. Loggins’ attention and concern when he shot, that everyone else, including Damario Jones, “would fall in the class of my view a third person.” Apx. 107; 143: 5. The prosecutor maintained that everybody except the man in the hoodie was a third party. This conclusion, under Wis. Stat. §939.48(3), would preclude self-defense as to the reckless homicide counts (counts 1 and 2).

Mr. Loggins did not, in his testimony, admit to firing at any particular person; rather he fired with the intention “to just get these people up off of me, to get them away from me.” 142: 141. However, the prosecutor’s cross-examination contradicts the notion that the shots Mr.

Loggins fired were entirely random and undirected, for the prosecutor recounted who was struck and asked: “You know that all of those people are friends of Damario; correct?” 142: 155. Mr. Loggins agreed. 142: 155. In the question of whether he should have a self-defense jury instruction, Mr. Loggins was entitled to have to court view the evidence in a light most favorable to him and his defense. A reasonable inference from this is that Mr. Loggins shot at Damario Jones and his partisans because those were the persons against whom Mr. Loggins was defending himself. He was not afforded the benefit of this reasonable inference by the prosecutor or the court. The prosecutor argued that the only person causing Mr. Loggins to fear for his safety is the man in the gray hoodie, and that everyone else present, including Damario Jones, is just a “third person,” is not a reasonable argument. After engaging in a one-on-one fight with Damario Jones, Mr. Loggins was physically attacked by numerous other person. These were not merely third persons. In fact, the prosecutor acknowledged as much in his closing argument to the jury:

We know that Damario Jones went over to his house, because he was angry with Mr.

Loggins and his brother had punched his dad. We know that Mr. Loggins went out. We know we could probably put people in two camps. Mr. Jones' camp and Mr. Loggins' camp. *This is not just two people on the street. There was a fight.*

143: 32 (emphasis added).

Third, the prosecutor asserted that even though the statute (Wis. Stat. §939.48(3)) does not apply to the recklessly endangering safety counts, Mr. Loggins should still not get a self-defense instruction, arguing: "This is not him defending himself. This is him just firing a gun recklessly to see where it, what happens." Apx. 108: 143: 6. While this might be a fair argument based on the prosecutor's view of the evidence, it is hardly a view of the evidence in a light most favorable to Mr. Loggins and his claim of self-defense.

Mr. Loggins did, on cross-examination, concede that at one point in the incident "I just started shooting." 142: 155. The prosecutor used this in arguing against giving a self-defense instruction: "

After viewing the evidence in the light most favorable to the defendant, *which would be his testimony*, at the moment he starts shooting, he's just shooting indiscriminately at anybody.

Apx. 107: 143: 5 (emphasis added). However, Mr.

Loggins' testimony, and in particular his most damaging concession on cross-examination, is not automatically the most favorable testimony.

Despite *pro forma* mention of the requirement that the evidence be viewed in a light most favorable to Mr. Loggins and his self-defense claim, he was never afforded the benefit of this requirement. The evidence reasonable supports the following scenario: Devon Loggins and Damario Jones were engaged in a fist-fight in the front yard of Mr. Jones' home. Each had persons present in support. Damario Jones had called some of his supporters and asked them to be present. While, in the course of the fight, Mr. Loggins started to prevail over Mr. Jones, a number of Mr. Jones' partisans intervened on Mr. Jones' behalf and physically attacked Mr. Loggins. At this point, outnumbered being beaten, Mr. Loggins produced or obtained a gun and started shooting at the persons attacking him.

The point of this scenario is not that is necessarily what happened, or that it is most probably what happened. The point is that it is a scenario reasonably supported by the evidence. The court never considered this scenario, or any other reasonable scenario supported by the evidence

which favored Mr. Loggins' request for a self-defense instruction. Rather, the court agreed with the prosecutor that, "regarding the homicide charges, that self-defense is not available pursuant to statute." Apx. 108; 143: 6. The court never questioned the prosecutor's assertion that the man in the gray hoodie posed a threat, and everybody else was a "third party," including Damario Jones, the person who came to the scene to confront Mr. Loggins and fight with him. The court concluded:

The State is correct, and as I recall the testimony, the defendant was concerned about somebody in a gray hoodie, but it's a nondescript person, and 15 shots were fired. So if you take the evidence in the light most favorable to the defense, *and that is his own testimony*, there is no self-defense here.

Apx. 109: 143; 7 (emphasis added). As noted previously, the most favorable evidence to a defendant's self-defense claim is not necessarily limited to the defendant's own testimony. More to the point, however, is that the court's synopsis is not a fair reading of Mr. Loggins' testimony. Mr. Loggins' testified (quoted above at page 18) that he was punched first by one person, then by a second person, and only then did the man in the gray hoodie swing at Mr. Loggins. 142: 150-151. He was being assaulted by

numerous persons. For the court to simply say Mr. Loggins was “concerned about somebody in a gray hoodie” is hardly a fair or accurate account of his testimony.

Mr. Loggins proceeded to trial to assert self-defense. His counsel’s opening statement made that clear:

But I think the theme at the end of this, for you jurors to work on, is going to be the question on the evidence as to whether or not Devon [Loggins] was being criminally reckless and [with] utter disregard of human life when he picked that gun up with all those people on him, or whether or not in the flash of that moment, there is going to be reasonable self-defense.

139: 94. A reasonable view of the evidence supported Mr. Loggins’ claim that he was defending himself against a large number of people attacking him. To the extent that these persons were attacking him, the victims in this case were not “third persons” regarding whom self-defense is not statutorily available. The court erred in denying a self-defense jury instruction.

CONCLUSION

Devon L. Loggins prays that this court vacate his conviction and sentence and remand the case for a new trial.

Respectfully submitted,

John T. Wasielewski
Attorney for
Devon L. Loggins

FORM AND LENGTH CERTIFICATION

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 5431 words.

John T. Wasielewski

APPENDIX CERTIFICATION

I hereby certify that I filed with this brief, an appendix that complies with §809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

John T. Wasielewski
Attorney for
Devon L. Loggins

CERTIFICATE OF COMPLIANCE

I hereby certify that I have submitted an electronic copy of this brief, identical to the printed form of the brief, but excluding any appendix, as required by Wis. Stat. §809.19(12).

John T. Wasielewski

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