

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 28, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 94-3115-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANDREZE M. TALLEY,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

Before Sullivan, Fine and Schudson, JJ.

PER CURIAM. Andreze M. Talley appeals from a judgment of conviction, after a jury trial, for attempted armed robbery, party to a crime, contrary to §§ 943.32(1)(b) and 939.05, STATS.; first-degree intentional homicide while armed, contrary to §§ 940.01(1) and 939.63, STATS.; and first-degree reckless homicide while armed, contrary to §§ 940.02(1) and 939.63, STATS. Talley presents two issues on appeal: whether the trial court violated his due process rights by refusing to allow his counsel to argue self-defense during

closing arguments, where the trial court had previously decided not to give a self-defense instruction to the jury; and whether the evidence was sufficient to support the jury's guilty verdicts on the two homicides. Talley's argument on the first issue is undeveloped and without citations to authority; therefore, we do not address it. See *State v. Flynn*, 190 Wis.2d 31, 39 n.2, 527 N.W.2d 343, 346 n.2 (Ct. App. 1994) (court of appeals need not consider inadequately briefed arguments), *cert. denied*, 115 S. Ct. 1389 (1995). On the second issue, we conclude that there is abundant evidence in the record to support Talley's convictions on the homicides. Accordingly, we affirm the judgment of conviction.

On June 11, 1994, in the early hours of the morning, police were dispatched to North 24th Place and Keefe Avenue to respond to a report of shots being fired in the area. Officer Harold Young observed Henry Land¹ discarding plastic bags containing marijuana and cocaine. Land informed Officer Young that someone may have been shot at 2438 West Keefe Avenue. Officer Young found Geraldine Talley, Andreze Talley's aunt, lying on the ground with a fatal gunshot wound to the neck. Officer Young, under Land's guidance, found another individual, Lawrence Perkins, who had suffered fatal gunshot wounds to the head. Talley, in the twenty-four hours preceding the shooting, had smoked approximately one-quarter ounce of cocaine.² Talley had then gone to Pete's house, a/k/a Anthony Perkins, just prior to the shooting to purchase more rock cocaine. Talley returned to Perkins's home later the same morning, armed with a loaded .38-caliber revolver, intent on stealing more drugs. Talley knocked on the door and heard what he believed to be a pistol cocking before Perkins opened the door. Talley pointed his gun at Perkins, and when Perkins put his hand in his pocket, Talley fired two or three times at Perkins. Talley proceeded to run through the house, exiting toward 24th Place. Talley heard gunshots while in the street and turned and fired in the direction he thought they were coming from. Talley's gunshots struck and killed his aunt who was standing at the street corner. Talley was arrested, charged and convicted.

¹ Land testified that he had been with Perkins when Talley had purchased the two "rocks" from Perkins. Later, Land heard two gunshots as he was opening the door for Geraldine Talley, who had come over to borrow \$10, and began to run, but could still identify Andreze Talley by physique as the individual who entered the apartment.

² The facts on Talley's conduct come from the testimony of Detective Brian O'Keefe who had taken a statement from Talley after the shooting.

In reviewing the claim of insufficiency of evidence, we will not reverse a conviction unless, when viewed in a light most favorable to the state, the evidence is so deficient in probable value and force that, as a matter of law, no reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *State v. Poellinger*, 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990). There is abundant evidence to support Talley's convictions on the two homicides.

1. First-degree intentional homicide of Lawrence Perkins

The elements of first-degree intentional homicide are: (1) causing the death of another person; and (2) doing so with the intent of killing that person. See § 940.01(1), STATS. Talley's inculpatory statement to police, which was presented to the jury, provides ample evidence to support his conviction for the first-degree intentional homicide of Perkins. Talley went to Perkins's apartment to rob him at gunpoint, waited while Perkins opened the door, and then immediately fired two shots into Perkins's head at close range with a .38-caliber handgun. See *State v. Morgan*, 195 Wis.2d 388, 441, 536 N.W.2d 425, 445 (Ct. App. 1995) (“[T]he propinquity of [an] intentionally pointed gun to a vital area of [a victim's] body raises the presumption of ... intent to kill.”). A reasonable jury could clearly convict Talley based on this evidence.

2. First-degree reckless homicide of Geraldine Talley

The elements of first-degree reckless homicide are: (1) causing the death of another person; (2) doing so by criminally reckless conduct, that is, committing actions that create an unreasonable and substantial risk of death or great bodily harm, and being aware that the conduct created such a risk; and (3) the circumstances surrounding the death show utter disregard for human life. *State v. Blair*, 164 Wis.2d 64, 70-71, 473 N.W.2d 566, 569 (Ct. App. 1991). The second element requires proof of both an objectively unreasonable and substantial risk, coupled with the defendant's subjective awareness of the risk. WIS JI—CRIMINAL 1020, cmt. n.3. To prove the “utter disregard for human life” element, the State need only prove conduct that is imminently dangerous to human life and which evinces a depraved mind. See *State v. Blanco*, 125 Wis.2d 276, 280-81, 371 N.W.2d 406, 409 (Ct. App. 1985). Factors used to determine this element include: “what the defendant was doing; why he was

doing it; how dangerous the conduct was; how obvious the danger was; and whether the conduct showed any regard for human life.” WIS J I—CRIMINAL 1345 at 2 (footnote omitted).

The evidence presented to the jury clearly proves each element of first-degree reckless homicide. Talley came out of the house after shooting Perkins, ran down the street, saw someone standing on the street corner, and fired at that person. This criminally reckless conduct shows an “utter disregard for human life,” and a reasonable jury viewing such evidence could return a guilty verdict.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.