

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 21, 1997

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

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0655-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TROY W. JACKSON,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN A. FRANKE, Judge. *Reversed and cause remanded for a new trial.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Troy W. Jackson appeals from a judgment of conviction for first-degree intentional homicide, as party to a crime. See §§ 940.01(1) and 939.05, STATS. He also appeals from an order denying his postconviction motion. In *State v. Smith*, 203 Wis.2d 288, 553 N.W.2d 824 (Ct. App. 1996), we reversed Jackson's co-defendant's conviction for first-degree

intentional homicide, as party to a crime and remanded for a new trial because the trial court improperly refused to permit Smith to impeach a state witness under RULE 906.09, STATS. See *Smith*, 203 Wis.2d at 294-302, 553 N.W.2d at 827-830. Smith and Jackson were tried together. We are bound by *Smith*. See *In re Court of Appeals of Wisconsin*, 82 Wis.2d 369, 371, 263 N.W.2d 149, 149-150 (1978) (*per curiam*) (a published decision by one district of the court of appeals is binding on the court of appeals). Accordingly, we must reverse Jackson's conviction and remand for a new trial as well.

Although we reverse Jackson's conviction, the preservation of Jackson's right to freedom from double jeopardy requires that we review the sufficiency of the evidence.¹ See *State v. Ivy*, 119 Wis.2d 591, 609-610, 350 N.W.2d 622, 631-632 (1984). "The standard for reviewing the sufficiency of the evidence to support a conviction is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Rushing*, 197 Wis.2d 631, 641, 541 N.W.2d 155, 159 (Ct. App. 1995). The standard of review when the defendant challenges the sufficiency of the evidence to support a conviction is the same whether it is a direct or circumstantial evidence case. *State v. Poellinger*, 153 Wis.2d 493, 501-502, 451 N.W.2d 752, 755 (1990).

The essential elements of first-degree intentional homicide are: (1) causing the death of another person; and (2) doing so with the intent to kill that person. See § 940.01(1), STATS. A person is a party to a crime if he or she directly commits the crime, intentionally aids and abets the commission of the crime, or is a party to a conspiracy to commit a crime. See § 939.05(2), STATS.

Jackson's conviction arises from the shooting of Travis Craig, who was killed while he stood at a phone booth with his uncle, George Owens. The State's theory was that Owens was the intended target of the shooting and that Jackson and his co-defendant Walter Smith, as parties to a crime, killed Craig while shooting at Owens. The State further theorized that animosity between

¹ We restrict our decision to the dispositive issues on appeal and do not address Jackson's remaining arguments. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issues need be addressed).

Jackson and Owens over the quality of cocaine Jackson sold to Owens' girlfriend, Myrtle Robertson, provided a motive for Jackson's involvement in the shooting. Although no physical evidence or eyewitness testimony linked Jackson to the shooting, circumstantial evidence was supplied through the testimony of Robertson.

At trial, Robertson testified that on the day of the shooting, she saw Jackson and his girlfriend outside her apartment. After she went inside her apartment, she heard a gunshot. She went outside and was informed by her friends that there was an altercation between Jackson and Owens. After she went back inside, Jackson and Smith came to her door looking for Owens. Smith told her that she would be shot if she did not tell him where to find Owens. Robertson stated that it appeared as if both Smith and Jackson had guns; Smith's gun appeared to be an Uzi. Robertson walked with Smith and Jackson to Owens' uncle's apartment in an attempt to find Owens. After failing to gain entry into the apartment, Robertson, Smith and Jackson returned to Robertson's apartment. Smith told Robertson that they really did not want Owens, they wanted his son because Owens was not worth killing. Smith and Jackson then left the apartment.

Later that evening, while Robertson was on the phone, Jackson, his girlfriend and Smith knocked on her door. Smith told Robertson that the police may be coming by to question her but he warned her not to give the police his name, threatening to kill her if she did. When the police arrived, she told them that it was Jackson, not Smith, who had a gun when they first came to her apartment. She gave a second statement in which she said Jackson had an Uzi-type gun. She later gave a third statement in which she said that both Jackson and Smith were carrying guns.

Jackson's challenge to the sufficiency of this evidence centers on the absence of any direct evidence linking him to the crime. We need not, however, concern ourselves with the evidence that is missing. "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." *Poellinger*, 153 Wis.2d at 507, 451 N.W.2d at 758. The above evidence was sufficient for the jury to reasonably infer that Jackson participated in the murder of Craig.

By the Court.— Judgment and order reversed and cause remanded for a new trial.

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