COURT OF APPEALS
DECISION
DATED AND RELEASED

January 31, 1996

No. 95-2824-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

In the Interest of Charles G.K.,
A Person Under the Age of 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

CHARLES G.K.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Kenosha County: FREDERICK P. KESSLER, Reserve Judge. *Affirmed*.

SNYDER, J. Charles G.K. appeals a juvenile court order finding him guilty of second-degree reckless injury while armed with a dangerous weapon, contrary to § 940.23(2), STATS.[1] Charles contends that there

[1] It was originally alleged in the delinquency petition that Charles had committed the offense of first-degree reckless injury while armed with a dangerous weapon, contrary to § 940.23(1), STATS. At the conclusion of the trial, the court found Charles guilty of the lesser-included offense.

was insufficient evidence to support the juvenile court's finding. Because we conclude that the evidence presented was sufficient to support the verdict, we affirm.

The juvenile court adjudication arose from an incident in which Charles, Adam D., Joey C. and several other youths were upstairs at Joey's residence. Adam tried to persuade the others to go outside and ride his go-cart with him. Unable to convince anyone to accompany him, he left and pushed the go-cart from the driveway.

The youths remaining upstairs started fooling around with a pellet gun and fired several shots out the window at the go-cart. Adam testified that he heard one shot whistle by him, another hit the go-cart and then felt a third shot hit him in the head. The shots all occurred within a minute's time.

Adam ran back to the house and one of the boys told him to come inside. Charles told Adam that he was sorry he hit him and that it had been an accident. After Adam returned home he told his brother what had happened; the police were notified and Adam was taken to the hospital by ambulance.

The pellet had pierced Adam's scalp and then traveled forward under the skin about an inch before coming to rest. The emergency room physician removed the pellet under local anesthesia.

Police investigated the incident and Charles admitted shooting the pellet gun once at the go-cart, but stated that Adam was about ten feet from it at

the time.[2] In his statement to the police, Charles said that after he had fired the single shot at the go-cart,[3] Adam came running toward the house, saying he had been shot.

The juvenile court found Charles guilty of the lesser-included offense of second-degree reckless injury while armed with a dangerous weapon, and this appeal followed.

The single issue on appeal is whether there was sufficient evidence presented to support the verdict of the juvenile court. In deciding whether a verdict was based on sufficient evidence, an appellate court may not overturn the conviction "unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See* ***State v. Poellinger,*** 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990). The test of whether evidence is sufficient to support a guilty verdict is whether this court can conclude that the trier of fact, acting reasonably, could be convinced to the required degree of certainty by evidence which it had a right to believe and accept as true. ***State v. Teynor,*** 141 Wis.2d 187, 204, 414 N.W.2d 76, 82 (Ct. App. 1987).

Charles contends that as a matter of law there was insufficient evidence to support the verdict; he argues that the injuries to Adam could not

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[2] Adam testified that his hands were in contact with the go-cart the entire time the shots were being fired.

[3] It was undisputed that the first two shots were fired by another youth.

support the element of the offense "caused great bodily harm." This requires us to construe the relevant statute. The construction of a statute is a question of law which this court reviews de novo. ***Wisconsin Hosp. Ass'n v. Natural Resources Bd.,*** 156 Wis.2d 688, 705, 457 N.W.2d 879, 886 (Ct. App. 1990).

"Great bodily harm" is defined in § 939.22(14), STATS., as "bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement or ... other serious bodily injury." In ***La Barge v. State,*** 74 Wis.2d 327, 334, 246 N.W.2d 794, 797 (1976), the supreme court stated that the phrase "other serious bodily injury" had a distinct meaning and was intended to broaden the scope of the statute. The addition of this phrase was intended to include serious bodily injury of a kind not encompassed in the specifics of the original statute. ***Id.*** "Serious bodily injury" are words of ordinary significance, well understood by anyone of ordinary intelligence. ***Id.*** at 334-35, 246 N.W.2d at 797-98.

The juvenile court was presented with testimony by the treating physician that he considered the injury to Adam to be a serious injury. When asked why he would consider it serious, he replied:

A. Potential of this sort of injury, if it would have penetrated the skull, it could have left a neurological injury. If it would have hit the eye, it could have injured the eye.

....

Q. How could it have been more serious?

A. Neurological injury to the brain, to the eye, to the ear, or to the vital structures of the neck.

The physician further testified that the most serious result, had the pellet struck Adam about three inches anterior to the entrance wound, would have been death.

Additional testimony was presented that just prior to the shooting, the gun was "pumped" six or seven times in order to increase its power.[4] One youth testified that during target practice, the pellet gun could penetrate both sides of an aluminum can and that he had killed a squirrel with the pellet gun from a distance of approximately thirty-five feet.

We conclude that the juvenile court was presented with sufficient evidence to find that Charles' actions caused "great bodily harm" to Adam. "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." ***Poellinger,*** 153 Wis.2d at 507, 451 N.W.2d at 758. The juvenile court's determination that Charles' actions were contrary to § 940.23(2), STATS., was appropriate.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

[4] Eight "pumps" would bring the pellet gun up to its full power.