COURT OF APPEALS DECISION DATED AND FILED

August 16, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

Nos. 00-3118-CR
00-3119-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY F. SKIBBA, SR.,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Portage County: JOHN V. FINN, Judge. *Affirmed*.

Before Vergeront, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Anthony Skibba appeals from a series of judgments convicting him of three counts of causing bodily injury by operation of a motor vehicle under the influence of intoxicants and three counts of failing to perform a duty upon striking an occupied motor vehicle. He claims the evidence

presented at trial was insufficient to support the convictions. We disagree and affirm for the reasons discussed below.

BACKGROUND

¶2 The charges arose out of a chain-reaction traffic accident. The State alleged that Skibba caused the accident by rear-ending the last in a row of three cars stopped at an intersection. It was uncontested that Skibba was intoxicated at the time of the accident, that he left the scene before the police arrived, and that he later lied to police about driving that day. Skibba denied, however, that he had collided with the vehicle ahead of him. Instead, he maintained that he had merely come upon the accident and that it must have been caused by the third car in the lineup, driven by uninsured motorist David Janes.

¶3 The driver of the first vehicle testified that he felt a “terrific blow” and that the impact was great enough to twist a heavy metal bar on his trailer hitch. Neither he nor his wife observed any impact between the Skibba and Janes vehicles. However, he thought the rear of Janes’s vehicle was “kinked down several degrees” and his wife thought that the back bumper of Janes’s vehicle was up a bit and “didn’t look normal.”

¶4 A passenger of the second vehicle initially believed that Janes was responsible for the accident. She noted that Skibba’s vehicle was stopped about twenty feet behind Janes’s vehicle when she exited her car. She saw no damage to the front of Skibba’s vehicle or the back of Janes’s vehicle, and no debris between those two cars. However, her suspicion shifted to Skibba when Janes claimed that Skibba had hit him and it became apparent that Skibba was intoxicated. In addition, she and the driver of her car both testified they had heard the distinct sound of a crash a second or two prior to the impact of Janes’s car with theirs.

¶5 Janes testified that he saw Skibba coming up behind him at a speed of about thirty miles per hour, and then heard squealing of tires prior to a substantial impact. In a written statement Janes provided the police on the day of the accident, Janes stated that there was no damage to the back of his vehicle or the front of the Skibba vehicle. He photographed damage to the front end of his car and obtained a repair estimate for that damage, but took no photographs and obtained no estimate for any rear-end damage. Nonetheless, Janes testified at trial that he subsequently noticed that his back bumper was turned up and that his trunk was pushed in as though it had been hit from underneath.

¶6 A police officer who examined Janes's vehicle at the scene observed no rear-end damage to Janes's vehicle and no skid marks. He also found that the greatest damage to any of the vehicles was that sustained by the front end of Janes's vehicle. He radioed to another officer that there would be damage to the front end of Skibba's vehicle.

¶7 A police officer who was trained as a technical accident investigator and who found Skibba and inspected his vehicle found no damage to the front of his car, aside from a broken turn signal. He testified, however, that a larger vehicle such as Skibba's car would not necessarily sustain noticeable damage upon impact with a smaller vehicle such as Janes's car.

¶8 A mechanic testified for the defense that he believed the accident could not have happened as described by Janes without causing physical damage to Skibba's car. However, the mechanic also admitted he had known Skibba for several years.

STANDARD OF REVIEW

¶9 In reviewing the sufficiency of the evidence to support a criminal conviction, we will not set aside a jury's determination unless the evidence, viewed in the light most favorable to the State, is so lacking in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. ***State v. Badker***, 2001 WI App 27, ¶9, 240 Wis. 2d 460, 623 N.W.2d 142. If more than one reasonable inference can be drawn from the evidence, we must adopt the inference which supports the conviction. ***State v. Hamilton***, 120 Wis. 2d 532, 541, 356 N.W.2d 169 (1984).

ANALYSIS

¶10 Skibba claims that the only evidence that he collided with the Janes vehicle was Janes's testimony to that effect, and that this testimony was incredible because it conflicted with the physical evidence that there was no damage to the rear of Janes's car or the front of Skibba's car. *See* ***State v. Tarantino***, 157 Wis. 2d 199, 218, 458 N.W.2d 582 (Ct. App. 1990) (noting a conviction cannot be based upon evidence that conflicts with the laws of nature or with fully-established or conceded facts). This argument is unpersuasive.

¶11 First, Janes's testimony was *not* the only evidence of a collision between the Skibba and Janes vehicles. There was also the testimony of the occupants of the second car that they heard a crash a second or two *before* they felt an impact. The logical inference is that they heard the sound of Skibba's vehicle colliding with Janes's vehicle before Janes's vehicle was propelled into their car. Additionally, while the damage to the back of Janes's vehicle was not as significant or noticeable as the damage to the front of his car, Janes was not the only witness to comment on it.

¶12 With respect to the lack of damage to the front of Skibba's vehicle, there was conflicting expert testimony on whether a collision would necessarily have damaged the larger car. Therefore, it was *not* an "established fact" or "law of nature" that the lack of damage ruled out the possibility of a collision, and Janes's testimony was not inherently incredible. They jury could reasonably have found Skibba guilty beyond a reasonable doubt based on the evidence before it.

By the Court.—Judgments affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).