

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 16, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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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.

Appeal No. 2014AP1759-CR

Cir. Ct. No. 2012CF4139

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAMON JAMES EDWARD HOWARD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Blanchard, P.J., Higginbotham and Kloppenburg, JJ

¶1 PER CURIAM. Damon Howard appeals a judgment of conviction. The issue is sufficiency of the evidence on the element of utter disregard for human life. We affirm.

¶2 As relevant to this appeal, Howard was convicted on two counts of first-degree recklessly endangering safety. He argues that the evidence was insufficient on the “utter disregard for human life” element. On that element, the jury was instructed to decide whether the defendant’s conduct showed utter disregard for human life, after considering factors such as what the defendant was doing, and why; how dangerous the conduct was; and whether the conduct showed any regard for life.

¶3 We affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact. *Id.* at 504.

¶4 The State’s evidence included a video showing the vehicle that Howard was driving accelerate sharply from the curb, on a diagonal line towards the opposite side of the street. The video and audio show that this move was abrupt and quick. The video image ends before showing the vehicle reaching all the way to the other side of the street or striking the victim, but the victim is briefly seen in the video, in the street in a location that would be in the vehicle’s path. In addition, the audio continues uninterrupted through the events described below.

¶5 There was testimony that the vehicle struck the first victim in the street, and then struck the parked car he was near. There was further testimony that Howard’s vehicle then struck the second victim at another parked car further along the other side of the street, a few seconds later. In addition, Howard’s blood alcohol level within three hours after the incident was 0.16.

¶6 Based on this evidence the jury could reasonably conclude that Howard showed utter disregard because he intentionally left the parking space in a manner that created a high risk of striking the victims, at a time when his proper operation of the vehicle was impaired by alcohol. The vehicle's acceleration was abnormally fast and sudden. By crossing to the other side of the street, its initial direction of travel deviated from a normal driving path in a manner that could reasonably be seen as unnecessary and not serving any useful purpose. The vehicle appears to have moved toward the first victim in an undeviating straight line. Although it was night, the street lighting, combined with the vehicle's own headlights, appear adequate to have enabled Howard to see the victims and avoid them.

¶7 Howard argues that his sudden departure from the parking space was compelled by safety concerns. However, there was other testimony casting doubt on the reasonableness of any such concerns, and the jury was not required to accept Howard's version. Howard's explanation was reasonably disputable and, because we review the evidence in the light most favorable to the verdict, we disregard it.

By the Court.—Judgment affirmed.

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

