

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 1, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-3021-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY L. JUDE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: RICHARD J. DIETZ, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jeffrey Jude appeals his conviction for felony bail jumping, after a jury trial. Both the bail jumping charge and an underlying disorderly conduct charge stem from a physical altercation Jude had with his ex-girlfriend while released on bail. The jury found that Jude's disorderly conduct

intentionally violated a standard condition of bail: “defendant shall commit no law violations.” Before trial and in open court, Jude stipulated that he knew of the bail condition at the time of the altercation. In postconviction proceedings, however, Jude claimed that he had actually not known of that condition and that his trial counsel was ineffective for advising him to stipulate to having such knowledge.¹ The trial court ruled that trial counsel had employed a competent and deliberate strategy and that Jude had acquiesced in the strategy. Jude argues on appeal that trial counsel’s performance was both deficient and prejudicial to his defense. We reject these arguments and affirm Jude’s bail jumping conviction.

¶2 Jude had been released on bail on an unrelated drug delivery charge. Six days later, he had an altercation with his ex-girlfriend. Before trial, Jude stipulated that he had been aware of the bail condition barring further law violations. In conformity with the stipulation, the trial court informed the jury before trial that the parties had agreed to certain facts: (1) Jude had been released on bond; (2) the bond had conditions; (3) one condition was that Jude obey the law; and (4) Jude knew of that condition. During the trial, Jude’s counsel employed a unified defense strategy against the two charges, asserting that Jude was not guilty of disorderly conduct and that he was therefore also not guilty of bail jumping: “One follows the other,” he told the jury. Before deliberations, the trial court instructed the jury that regardless of the parties’ stipulation, the jury still

¹ Jude argues that knowledge of the bail condition is a component of the intent element of bail jumping. See WIS. STAT. § 946.49(1). “Whoever, having been released from custody under ch. 969, *intentionally* fails to comply with the terms of his bond” is guilty of bail jumping. See WIS. STAT. § 946.49(1) (emphasis added). Ordinarily, knowledge of bail conditions is an essential element of the crime. See *State v. Taylor*, 226 Wis. 2d 490, 502, 595 N.W.2d 56 (Ct. App. 1999). The State argues, however, that the obey-the-law bail condition differs from other bail conditions. In its view, knowledge of it is therefore not an essential element. We will assume, without deciding, that knowledge of this bail condition, like knowledge of other bail conditions, is an essential element of bail jumping.

needed to decide whether Jude “knew that his actions did not comply with the terms of his bond.” The jury found Jude guilty of both charges, and Jude sought a new trial on the bail jumping charge. Jude claimed that trial counsel should not have advised him to stipulate to knowing of the obey-the-law bail condition when he never received a copy of the bond document and had no actual knowledge of the condition.

¶3 To show ineffective assistance of trial counsel, defendants need to show that trial counsel’s performance was deficient and that this prejudiced the proceeding’s outcome. See *Strickland v. Washington*, 466 U.S. 668, 694 (1984). Under the prejudice prong, defendants need to show a reasonable probability that but for counsel’s unprofessional errors, the result of the trial would have been different. See *id.* The errors must have been sufficiently serious to render the conviction unreliable. See *id.* at 687. The ultimate focus is on the fundamental fairness of the proceedings. See *State v. Haskins*, 139 Wis. 2d 257, 263-64, 407 N.W.2d 309 (Ct. App. 1987). Defendants have the burden of proof on both components. See *State v. Smith*, 207 Wis. 2d 258, 273, 558 N.W.2d 379 (1997). If defendants fail to prove either prong, the reviewing court need not consider the remaining prong. See *State v. Hubanks*, 173 Wis. 2d 1, 25, 496 N.W.2d 96 (Ct. App. 1992).

¶4 Here, Jude has not shown that trial counsel’s performance was deficient. If Jude had not stipulated to knowledge, the prosecution could have tried to prove knowledge by other evidence. This would have allowed the jury to hear evidence that Jude preferred excluded. For example, Jude had a criminal record and conceded to obtaining bail in prior cases. Since Jude testified, the prosecution could have cross-examined him about those cases to show that he had knowledge of the bail condition from prior court experience. If Jude had elected

not to testify, the prosecution could have introduced extrinsic evidence of those criminal cases to circumstantially prove Jude's knowledge. Other crimes evidence is admissible on the issue of knowledge. *See State v. Schillcutt*, 116 Wis. 2d 227, 236, 341 N.W.2d 716 (Ct. App. 1983); *see also United States v. Brand*, 79 F.2d 605 (2d Cir. 1935) (knowingly transporting stolen car in interstate commerce; previous sale of stolen car admissible to show knowledge). Jude's criminal justice experience and prior release on bail, as shown by evidence from his other cases, would have been highly probative of Jude's knowledge of bail conditions. This high degree of relevance would have outweighed the risk of prejudice. *See Barrera v. State*, 99 Wis. 2d 269, 278, 298 N.W.2d 820 (1980). Jude's trial counsel alluded to this in postconviction testimony, stating that Jude stipulated partly to keep out other evidence. Trial counsel also sought to keep out evidence about the drug crime on which Jude was given bail. In short, reasonably competent counsel could elect the stipulation strategy.

¶5 Beyond that, if Jude had elected to contest the knowledge issue, he risked discrediting his entire case, including his defense against the disorderly conduct charge. As noted above, the prosecution could have readily proved that Jude had the requisite knowledge of the bail condition, and the jury could have easily found that Jude's disclaimer of knowledge was untrue. If the jury reached that finding, it could draw an adverse inference as to Jude's overall credibility. Factfinders may question the overall credibility of witnesses whose testimony on a material issue has been significantly contradicted by other evidence. *See McClelland v. State*, 84 Wis. 2d 145, 160, 267 N.W.2d 843 (1978); MCCORMICK ON EVIDENCE § 47, at 97-100 (2d ed. 1972). In other words, if the prosecution had impeached Jude's testimony on the bail jumping charge, that impeachment could have carried over to and damaged Jude's testimony on the disorderly conduct

charge. This could have weighed heavily against Jude's defense on the disorderly conduct charge. That defense rested almost entirely on Jude's credibility. Jude claimed that any physical contact he made with his ex-girlfriend resulted from attempts to fend off her attack. The ex-girlfriend's testimony was otherwise. Jude's guilt depended on whether the jury believed him or her. In the final analysis, trial counsel had reasonable basis to stipulate to knowledge and to choose a strategy more likely to produce a successful defense.

By the Court.—Judgment and order affirmed.

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

