COURT OF APPEALS
DECISION
DATED AND FILED

March 20, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-1752-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JAMES CHINAVARE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: CLARE L. FIORENZA AND JEAN W. DIMOTTO, Judges. *Affirmed.*

¶1 CURLEY, J.[1] James Chinavare appeals from the judgment convicting him of seven counts of intentionally disobeying a court order,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

following a court trial. The trial court found that, contrary to WIS. STAT. § 758.01(1)(b), Chinavare was in contempt of court for violating a permanent injunction issued by the Milwaukee County circuit court.[2] Chinavare also appeals from the order denying his postconviction motion.[3] Chinavare argues that the evidence presented at trial was insufficient. This court disagrees, and affirms the trial court's judgment and order.

I. BACKGROUND.

¶2 On May 9, 1997, James Chinavare was charged with eight counts of intentionally disobeying a court order.[4] The complaint alleged that on various dates in 1997, Chinavare engaged in conduct that violated certain provisions of a permanent injunction issued by the circuit court on December 10, 1992. The injunction specifically prohibited Chinavare from, *inter alia*, "blocking, impeding or obstructing access to, ingress into or egress from," various clinics "at which abortions are performed in the City of Milwaukee," including the Planned Parenthood of Wisconsin clinic (the clinic) involved in the instant case. The injunction further prohibited him from "demonstrating … within twenty-five (25) feet of doorways, entrances [or] exits" of the clinic.

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[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise indicated.

[3] The permanent injunction was signed by Judge Jeffrey A. Wagner on December 10, 1992, and amended by Judge Patrick Sheedy on April 15, 1993. Judge Clare L. Fiorenza presided over Chinavare's trial and signed the judgment of conviction entered on March 26, 1999. Judge Jean W. DiMotto signed the order denying Chinavare's postconviction motion on June 13, 2000.

[4] The criminal complaint charged Chinavare with eight counts, but one count, count five, was dismissed by stipulation of the parties prior to trial.

¶3 Each of the seven counts charged in the complaint alleged that on certain dates between January and April of 1997, Chinavare demonstrated within twenty-five feet of the clinic's entrance. Counts one through four and count seven of the complaint also alleged that on certain dates Chinavare blocked, impeded and obstructed ingress to and egress from the clinic.[5] Further, the complaint alleged that Chinavare had been served with a copy of the permanent injunction as a named party in the earlier proceeding. Finally, the complaint asserted that Chinavare intentionally disobeyed the permanent injunction and, therefore, he was in contempt of the court's order.

¶4 Chinavare waived his right to a jury and a court trial was held. At trial, the State called two witnesses, Jason Winn, a patient escort at the clinic, and Gregory Eggum, a special agent with the Wisconsin Division of Criminal Investigation. Both testified to their observations of Chinavare's actions on the dates in question. The State also introduced a videotape, shot by Winn outside the clinic, which showed Chinavare's conduct on six of the seven dates. Following the presentation of the State's evidence, Chinavare rested without calling any witnesses. The trial court issued an oral decision finding Chinavare guilty of all counts. On each count, Chinavare was sentenced to concurrent one-year-terms in the House of Corrections, to be served consecutive to any other sentence. The trial court stayed his sentence pending appeal. Chinavare then filed a postconviction motion, which was denied by the trial court.[6] Chinavare appeals.

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[5] Specifically, the complaint alleged that the events occurred in 1997 on January 24, 25, 31, February 15, March 7, 21, and April 11.

[6] The trial court did not issue a written order denying Chinavare's postconviction motion. Chinavare filed a notice of appeal; however, because the trial court had not issued a written order on the postconviction motion this court dismissed the appeal as premature. Shortly thereafter the trial court issued a written order denying Chinavare's postconviction motion.

II. ANALYSIS.

¶5 In order to prove a contempt of court, the State was required to establish the following three elements beyond a reasonable doubt: (1) the existence of a court order proscribing Chinavare from engaging in specific conduct; (2) evidence that Chinavare knew of the order and had the ability to comply with the court's order; and (3) evidence that Chinavare intentionally disobeyed the court's order. WIS JI—CRIMINAL 2031. Based upon the evidence introduced at trial, the trial court concluded that:

> [T]he State has proved beyond a reasonable doubt each element of the seven counts of contempt of court. That [Chinavare] was ordered not to demonstrate within 25 feet of the entrance to the Planned Parenthood Clinic and was ordered not to impede the egress or ingress of the entrance to the clinic. That [Chinavare] did have the ability to comply with the order and that [he] intentionally disobeyed this court order.

The trial court therefore found Chinavare guilty on each of the seven counts of contempt of court charged in the complaint.

¶6 Chinavare now challenges these findings, arguing that the evidence presented at trial does not support the trial court's finding that he intentionally disobeyed the permanent injunction.[7] Chinavare contends that the evidence does not support the trial court's finding that he demonstrated within twenty-five feet of the clinic's entrance. He maintains that his conduct did not amount to

[7] Chinavare does not challenge the trial court's findings regarding the first two elements of contempt – that a permanent injunction existed, and that he was aware of the injunction and had the ability to comply with the order.

"demonstrating," as that term is commonly used.[8] Further, Chinavare contends that in order for his conduct to amount to "demonstrating," more is needed. He submits that:

> a person demonstrating normally would be carrying a sign, wearing a button, handing out literature, or expressing his opinion in a public way by the words he would use, e.g. talking about a subject, shouting things, shouting slogans, chanting things, etc. If none of these indicia are present, it would be erroneous to say a person was involved in demonstrating.

Chinavare claims there is no evidence that he engaged in any of these actions. Finally, Chinavare argues that the evidence did not support the trial court's finding that he "blocked, impeded or obstructed ingress to or egress from the clinic."

¶7 When the sufficiency of the evidence is challenged on appeal, this court reviews to see whether the trier of fact, acting reasonably, could be convinced by the evidence beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990). The test is not whether this court is convinced of Chinavare's guilt beyond a reasonable doubt, but whether this court can conclude that the trier of fact could, acting reasonably, be so convinced by

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[8] As support for this assertion, Chinavare quotes the definition of "demonstration" contained in THE AMERICAN HERITAGE DICTIONARY. Although Chinavare does not indicate which edition of THE AMERICAN HERITAGE DICTIONARY he is quoting from, we note that the definition he provides is almost identical to the definition contained in the second college edition, 1982, which provides:

> 1. The act of making evident or proving. 2. Conclusive evidence; proof. 3. An illustration or explanation, as of a theory or product, by exemplification or practical application. 4. A manifestation, as of one's feelings. 5. A public display of group opinion, as by a rally or march. 6. A show of military strength.

Chinavare asserts that the only definition relevant to this case is "a public display of group opinion, as by a rally or march," and that this definition does not apply to his conduct.

evidence it had a right to believe and accept as true. ***Id.*** In reviewing the evidence to challenge a finding of fact, this court reviews the evidence in the light most favorable to the finding. ***Id.*** Reasonable inferences drawn from the evidence can support a finding of fact and, if more than one reasonable inference can be drawn from the evidence, the inference which supports the finding is the one that must be adopted. ***Id.*** In other words, reversal is required only when the evidence, considered 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 be convinced of Chinavare's guilt beyond a reasonable doubt. ***State v. Wyss***, 124 Wis. 2d 681, xxx, 370 N.W.2d 745 (1985). This court is satisfied that the evidence presented at trial is sufficient to support Chinavare's conviction.

¶8 As noted, the evidence the State presented at trial consisted of testimony from Winn and Eggum, as well as a videotape of Chinavare's conduct shot by Winn outside the clinic.[9] First, Winn testified that as a patient escort at the clinic he was responsible for videotaping the protestors and escorting the patients from their cars to the clinic's entrance. He asserted that he was aware of the injunction prohibiting certain individuals, including Chinavare, from demonstrating within twenty-five feet of the clinic's entrance, and that he had measured the twenty-five feet distance from the entrance in all directions. Winn was able to identify the twenty-five foot mark for the court by placing an "x" on several photographs the State introduced into evidence, and by describing several

[9] The trial court viewed the videotape but did not listen to the audio portion. This court has considered the videotape without the audio.

landmarks, such as street signs and planters, that were within twenty-five feet of the entrance.

¶9 Winn testified that he videotaped the clinic on six of the seven dates specified in the complaint. Winn stated that on each of those dates, he personally observed Chinavare approach patients and attempt to give them literature or try to persuade them not to go to the clinic.[10] Winn also testified that sometimes Chinavare would stop following the patients before he reached the twenty-five foot mark, but on each of the dates he observed Chinavare, Chinavare would follow a patient all the way to the clinic's front entrance at least once. Finally, Winn identified a copy of the videotape he made and verified that the correct date and time appeared on the screen during the recording. He explained that although the tape primarily showed Chinavare's conduct on the dates in question, other individuals were also present and they appear on the tape. Winn stated that the videotape fairly and accurately depicted the events he observed on the specified dates.

¶10 The trial court then viewed the videotape over Chinavare's objection.[11] The videotape clearly shows Chinavare's conduct on six of the seven

[10] Specifically, on cross-examination, Winn indicated that Chinavare said things to the patients such as "don't kill your baby," or "don't go in there."

[11] On appeal, Chinavare does not explicitly challenge the trial court's ruling admitting the videotape into evidence. Instead, Chinavare argues that, "[t]he manner in which the Attorney General introduced the 24 minute videotape was highly unusual and renders an appellate review of the trial court's decision extremely difficult." As noted, this court has viewed the videotape. Even if this court were to assume that Chinavare is arguing that the trial court erred in admitting the videotape, he fails to cite any legal authority to support his argument. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (arguments supported by only general statements, unsupported by citations to legal authority or otherwise inadequately briefed will not be addressed); ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995) (court of appeals need not address "amorphous and insufficiently developed" arguments).

dates specified in the complaint. The tape shows Chinavare approaching patients in front of the clinic, carrying literature under his arm, talking to the patients, pointing and gesturing at them, and following them to the clinic. On several occasions, the videotape shows Chinavare stopping before he reaches the twenty-five foot mark around the clinic's entrance. However, the video also shows at least one occasion on each date where Chinavare continues to speak to a patient following her past the twenty-five-foot mark, and often, following her all the way to the clinic's front entrance. The videotape also portrays Chinavare on several occasions following a patient up to the entrance, standing at the front door, and pointing and speaking to the patient as the patient walks through the clinic entrance. The videotape also depicts other unidentified individuals carrying anti-abortion signs, approaching the patients, talking to them and following them to the clinic's entrance. Further, the videotape also captures Chinavare congregating with these other individuals when no patients are present.

¶11 Eggum testified that he was assigned to investigate allegations that Chinavare was in violation of a court order, and that he observed Chinavare at the clinic on April 11, 1997. Eggum stated that on that date, "I observed [Chinavare] within 25 feet of the front doors [of the clinic], specifically standing in front of the front door on two occasions on that day." Eggum referred to a diagram, admitted into evidence, that he had drawn depicting the clinic, the surrounding sidewalk and street, and showing the area within the twenty-five-foot boundary set by the court's order. Eggum also testified concerning photographs he took of the clinic on April 11, 1997. He explained that he observed Chinavare "standing directly in front of the entry way on the sidewalk to the [clinic]."

¶12 Here, the evidence is sufficient to support the convictions. Further, Chinavare's definition of the word "demonstrating" is also rejected, because

Chinavare's proposed definition would lead to absurd results. For example, were this court to accept his narrow definition of the word "demonstrating," participants in a sit-in in support of a particular cause would not be "demonstrating." Such a result is absurd. Additionally, even if this court were to adopt Chinavare's definition, this court concludes that, contrary to his assertions, Chinavare was "demonstrating." Specifically, the evidence indicates that Chinavare was carrying literature under his arm and attempting to hand it to incoming patients. He was also "expressing his opinion in a public way" to the people entering the clinic by shouting anti-abortion messages and slogans at them. Moreover, in the video, some of the other individuals with whom Chinavare congregated were carrying signs and could be seen talking to the patients. Therefore, even under Chinavare's narrow definition, these individuals were "demonstrating," and the trial court was entitled to infer, based on the protestors' conduct, that Chinavare was "demonstrating" with them. Even if this court were to conclude that more than one reasonable inference could be drawn from Chinavare's conduct, this court must adopt the inference that supports the trial court's finding. Therefore, this court concludes that the evidence presented at trial, considered in a light most favorable to the State, supported the trial court's findings that Chinavare was "demonstrating" outside the abortion clinic.

¶13 This court is satisfied that the evidence supported the trial court's finding that Chinavare blocked or impeded ingress to or egress from the clinic on the dates specified in the complaint. Therefore, this court concludes that the evidence presented at trial was sufficient to support Chinavare's conviction on all seven counts of contempt of court for violating the permanent injunction and the judgment is affirmed.

By the Court.—Judgment and order affirmed.

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