COURT OF APPEALS
DECISION
DATED AND FILED

September 18, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal Nos. 2007AP267-CR
2007AP268-CR

Cir. Ct. Nos. 2005CM1889
2005CF796

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY R. HANSEN,

DEFENDANT-APPELLANT.

APPEALS from judgments of the circuit court for Outagamie County: JOHN A. DES JARDINS, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Jeffrey Hansen appeals judgments of conviction, entered on a jury's verdict, convicting him of one count of felony solicitation of perjury and two counts of intimidating a witness. He asserts there is insufficient

evidence to support the verdicts. We reject his argument and affirm the judgments.

Background

¶2 Joseph Barringer, an inmate in the Outagamie County Jail, contacted the district attorney's office to request a meeting. In his written request, Barringer claimed that Hansen, a fellow inmate at the jail, had asked Barringer to lie for him in court, even going so far as to give Barringer a script from which to testify. Sergeant Cary Meyer met with Barringer on October 28, 2005, and Hansen was eventually charged with solicitation of perjury.

¶3 On November 10, 2005, as corrections officer Stephanie Falk was escorting other inmates through the jail, she saw Hansen hold up a sign stating "Barringer is a snitch." On November 11 or 13, Falk again saw Hansen hold up a sign, but this time, it said, "Barringer 4F is a snitch." This second sign indicated Barringer's cellblock. Falk testified that "snitch" is a derogatory term and that when someone is so labeled, "[u]sually their safety in the jail is in danger." Another officer testified that during a search of Hansen's cell, jail staff discovered signs saying, "Warning, snitch." These signs eventually led to the intimidation charges, which were consolidated with the solicitation charge for trial.[1]

¶4 At trial, Hansen's cellmate, Bradley Braxton, testified he saw a sign approximately three to five times. Braxton also stated Hansen told him Barringer

[1] Hansen was also charged with, and convicted on, two counts of disorderly conduct. He does not challenge that portion of the judgment.

was a snitch, and Hansen "wanted to let everybody know that [Barringer] was a snitch and that maybe somebody would fuck him up."

¶5 Hansen testified in his own defense. He stated while he had given something written to Barringer, it was merely a product of the "meticulous" notes Hansen keeps about nearly everything, not a script. Hansen admitted making a sign about Barringer out of frustration, but denied expressing to Braxton an interest in having someone harm Barringer. The jury convicted Hansen on all counts charged, and Hansen appeals.

Discussion

¶6 Hansen alleges there is insufficient evidence to convict him of solicitation of perjury and intimidation of a witness. When we review a conviction for sufficiency of the evidence, we will not reverse a 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." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We may not substitute our judgment for that of the fact-finder. ***Id.*** at 506. "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," we may not overturn the verdict even if we believe the fact-finder should not have found guilt. ***Id.*** at 507.

¶7 Hansen contends the State failed to prove the second element of the solicitation of perjury charge. As instructed by the court, the second element required the jury to find:

> the defendant advised another person, by the use of words or other expressions, to commit the crime of perjury and

> did so under circumstances that indicate, unequivocally, that the defendant intended that perjury be committed.
>
> "Unequivocally" means that no other inference or conclusion can reasonably and fairly be drawn from the defendant's acts.

¶8 Hansen asserts that even viewing the evidence most favorable to the State, he did not "advise" Barringer to say anything; at best, he merely "asked" Barringer to testify favorably. Hansen contends there was no evidence he told Barringer to lie or testify in a certain manner and he points out that Barringer testified Hansen did not discuss with him the substance of the note or anything Barringer was to say in court. He further argues there is no evidence of threats or promises made to Barringer.

¶9 First, we disregard Hansen's argument about threats and promises, as there is no such element in the crime charged. Second, Hansen ignores portions of Barringer's testimony, where Barringer stated Hansen asked him to lie. Specifically, Barringer testified:

> Q: After you went to his room, what happened?
>
> A: He asked me if I would come to court and lie for him.
>
> Q: Did he specifically tell you more details about what he wanted you to say?
>
> A: No. He just—he wrote what he wanted me to say on paper.
>
> Q: Did he tell you generally what that would be about?
>
> A: An upcoming court case[].

¶10 Barringer also testified regarding the circumstances surrounding Hansen's delivery of the written "script." He was asked whether Hansen said anything while he was preparing the script, and Barringer responded:

> A: He never wrote this in my presence. He just asked me if I would come to court and lie for him. And then later on that day, he had written this out and gave it to me.
>
> ….
>
> Q: He just asks you straight out, Would you come to court and lie for me?
>
> A: He said he just got done talking to [another inmate], and he wanted to know if I would come to court and lie for him. That is when he scripted this up and handed it to me later that day.

¶11 The State also submitted into evidence the request form Barringer sent to the district attorney's office. On the form, Barringer advised, "I need to speak with someone out of your office. … Jeff Hansen has scripted a lie on paper for me to tell the jury. I do have the paper … in my possession."

¶12 Asking Barringer to lie, then providing him with the text of the lie Hansen expected him to tell, indicates Hansen advised Barringer to commit perjury and that Hansen unequivocally intended perjury be committed. It is the jury's function to balance the credibility of witnesses and the weight to be assigned to their testimony. ***Morden v. Continental AG***, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. Barringer's testimony is not patently incredible and, once the jury accepted it, his testimony was a sufficient basis on which the jury could convict Hansen for solicitation of perjury.

¶13 Hansen also asserts there is insufficient evidence to convict him of intimidation of a witness. The relevant elements of that crime required the State to prove Hansen "attempted to dissuade Joseph Barringer from attending or giving testimony at a proceeding authorized by law" and Hansen acted "knowingly and maliciously … with the purpose to prevent [Barringer] from testifying." Hansen asserts there is no evidence Hansen attempted to dissuade Barringer from giving

testimony; that is, he claims he "did not try to prevent Barringer from doing anything." Moreover, because Barringer testified he was unaware of the "snitch" signs, Hansen asserts "it would be impossible for him to be intimidated by those words or that sign."

¶14 Again, Hansen argues about the State's failure to prove a non-existent element. Nothing about intimidation of a witness requires that witness actually be intimidated. Rather, the focus is on the defendant's intent. Thus, the fact that Barringer may not have been aware of Hansen's signs or his designation of Barringer as a snitch is irrelevant.

¶15 What is relevant, however, is that shortly after Hansen learned Barringer was called to testify at the preliminary hearing on the solicitation of perjury charge, Hansen created signs identifying Barringer as a snitch and identifying Barringer's cell. The jury heard evidence that an inmate's safety is often jeopardized once branded a snitch, and Hansen's cellmate testified Hansen called Barringer a snitch in the hope that another inmate would harm him. Moreover, Hansen admitted he was trying to send Barringer a message, although Hansen testified the message was merely meant to ridicule Barringer, not dissuade his testimony. A reasonable jury could infer that making a sign branding Barringer as a snitch was a knowing and malicious attempt to dissuade him from either: (1) attending a court proceeding by attempting to incite violence against Barringer, thereby physically incapacitating him, or (2) actually giving testimony by pressuring him to recant his statements so the "snitch" designation would be withdrawn and he could avoid physical harm.

By the Court.—Judgments affirmed.

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