

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 20, 2005

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.

**Appeal Nos. 03-3384-CR
03-3385-CR
03-3386-CR
03-3387-CR
03-3388-CR
03-3389-CR
03-3390-CR
03-3391-CR
03-3392-CR**

**Cir. Ct. Nos. 00CF002080
00CM002819
00CM003114
00CM003116
00CM003220
00CM003832
00CM003853
00CM004227
00CM004228**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LANCE L. EGNER,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Dane County: ANGELA B. BARTELL, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Lance Egner appeals multiple judgments of conviction and an order denying postconviction relief. The issue is whether some of Egner’s bail jumping convictions violate the double jeopardy clause. We conclude that they do not and affirm.

¶2 We recently discussed the methodology for reviewing claims that charges are multiplicitous. *See State v. Beasley*, 2004 WI App 42, ¶10, 271 Wis. 2d 469, 678 N.W.2d 600, *review denied*, 2004 WI 114, 273 Wis. 2d 655, 684 N.W.2d 136 (No. 02-2229-CR).

If charged offenses are identical in law and fact using the ***Blockburger*** test, there is a presumption that the legislature did not intend multiple punishments. This presumption is only overcome by a clear indication of contrary legislative intent. On the other hand, if charged offenses are *not* identical in law and fact using the ***Blockburger*** test, there is no potential double jeopardy problem, but there may be a due process problem if the legislature did not intend to authorize cumulative punishments. In this second situation, there is a presumption that the legislature intended to permit cumulative punishments, and the defendant has the burden of overcoming this presumption by showing a clear legislative intent that cumulative punishments are not authorized. The defendant must meet that burden in light of four factors: (1) all applicable statutory language; (2) legislative history and context of the statute; (3) the nature of the proscribed conduct; and (4) the appropriateness of multiple punishment.

Beasley, 271 Wis. 2d 469, ¶10.

¶3 Egner contends that some of his bail jumping charges were identical in fact because they were based on him having contact with Stephanie Kaatz in

contravention of bond conditions imposed in different cases.¹ He contends that his contact with Kaatz constituted only one volitional act, and the charges are thus identical in fact.

¶4 Based on *State v. Richter*, 189 Wis. 2d 105, 525 N.W.2d 168 (Ct. App. 1994), which is directly on point, we reject Egner’s argument. In *Richter*, we concluded that multiple charges resulting from a single act that violated conditions imposed in several bonds were different in fact. *Id.* at 109. We explained that “[e]ach count would require proof of facts for conviction which the other two counts would not require because each bond would give rise to an individual factual inquiry.” *Id.*

¶5 Acknowledging that *Richter* is on point, Egner nevertheless argues that the charges are multiplicitous under the subsequent supreme court decision in *State v. Anderson*, 219 Wis. 2d 739, 580 N.W.2d 329 (1998). In *Anderson*, the supreme court held that conduct that violated two different provisions of the same bond did not violate the double jeopardy clause because the conduct involved separate volitional acts. *Id.* at 742, 750-51. The supreme court explained that offenses are different in fact “if each requires ‘a new volitional departure in the defendant’s course of conduct.’” *Id.* at 750 (quoting *State v. Eisch*, 96 Wis. 2d 25, 36, 291 N.W.2d 800 (1980)). Egner’s reliance on *Anderson* is misplaced. Unlike the situation in *Anderson*, the critical question here is not whether Egner’s conduct constituted a single volitional act. In fact, no one really disputes that it

¹ There is no dispute that the charges are identical in law because all are contrary to the same statute, WIS. STAT. § 946.49(1)(a) (2001-02), which prohibits a person from violating the conditions of bond.

did. Instead, the dispositive question is whether the charges are not identical in fact because each count requires proof of facts that the other counts do not. We answered this question in *Richter*, concluding that charges based on one act that violates multiple bonds are not identical in fact because each bond requires a separate factual inquiry for conviction. That answer binds us here.

By the Court.—Judgments and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

