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DISTRICT II

May 14, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2013AP2291-CR State of Wisconsin v. Richard R. Turgeon (L.C. # 2011CF818)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Richard R. Turgeon appeals from a judgment of conviction and an order denying his motion for postconviction relief. He contends that his convictions for three counts of possessing an improvised explosive device were multiplicitous. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[1] We affirm the judgment and order of the circuit court.

[1] All references to the Wisconsin Statutes are to the 2011-12 version.

Turgeon was convicted following no contest pleas to three counts of possessing an improvised explosive device. The charges stemmed from the police's discovery of three cardboard tubes in his workroom at his home, each filled with an explosive chemical compound and each having a "hobby fuse."

The circuit court imposed an aggregate sentence of twelve years of imprisonment. Turgeon subsequently filed a motion for postconviction relief, arguing that his convictions were multiplicitous. The circuit court denied his motion. This appeal follows.

On appeal, Turgeon renews his argument based on multiplicity. He submits that he should not have been prosecuted or convicted for three counts of what he considers merely one act: possessing the improvised explosive devices in question.

The issue of multiplicity arises when a defendant is charged in more than one count for a single offense. ***State v. Ziegler***, 2012 WI 73, ¶59, 342 Wis. 2d 256, 816 N.W.2d 238. The test to determine whether multiple counts are permissible is first, whether the charges are identical in law and fact, and second, whether the legislature intended to allow more than one unit of prosecution. *See* ***State v. Anderson***, 219 Wis. 2d 739, 746, 580 N.W.2d 329 (1998). If the offenses are different in law or fact, then there is a presumption that the legislature intended multiple punishments. ***Id.*** at 751. The presumption may be rebutted only by showing clear intent to the contrary. ***Id.*** Questions of multiplicity and legislative intent are questions of law that we review de novo. *See* ***State v. Davison***, 2003 WI 89, ¶15, 263 Wis. 2d 145, 666 N.W.2d 1.

Here, we are satisfied that the three counts of possessing an improvised explosive device were different in fact. That is because each required proof of an additional fact that the others

did not (i.e., each required the State to prove that the cardboard tube associated with that specific count was an improvised explosive device). Accordingly, we presume that the legislature intended multiple punishments for the offenses in question. *See* ***Anderson***, 219 Wis. 2d at 751. That presumption is consistent with the language of WIS. STAT. § 941.31(2)(b) which allows prosecution and punishment for "*any* improvised explosive device" (emphasis added). Because Turgeon has not met his burden of overcoming this presumption, we reject his multiplicity challenge.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals