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DISTRICT II

October 8, 2014

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Fond du Lac County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2014AP122-CR

State of Wisconsin v. Lee H. Stellmacher (L.C. #2011CF314)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Lee H. Stellmacher appeals from a judgment of conviction entered after a jury found him guilty of conspiracy to commit first-degree intentional homicide and conspiracy to commit substantial bodily injury. Stellmacher concedes that the issue presented on appeal is governed by the holding in *State v. Sample*, 215 Wis. 2d 487, 573 N.W.2d 187 (1998), and seeks only “to preserve it for ultimate Supreme Court review, whether by certification or on petition for

review.”¹ Based upon 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).² Because we are bound to follow precedent, *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997), we affirm.

Stellmacher enlisted Jeff Kranz to help him find someone who would cause bodily harm to one man and make another man “disappear.” Kranz told Stellmacher he had found a motorcycle gang member willing to do the job, and Stellmacher gave him money to pay the biker. Kranz never hired anyone to carry out Stellmacher’s plan and eventually contacted the police. An officer posing as a hit man met with Stellmacher and feigned an agreement to carry out the homicide. The undercover officer later contacted Stellmacher and told him he had killed the target and wanted to collect his money. Stellmacher was arrested as he met with the officer to pay the final installment.

Stellmacher contends that WIS. STAT. § 939.31³ should not be construed to criminalize unilateral conspiracies which occur where, as here, only one member of a conspiracy actually intends to commit the underlying crime. This precise issue was decided by the *Sample* court,

¹ Stellmacher asserts that he also raised the issue in the trial court and that it is preserved for appeal.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

³ WISCONSIN STAT. § 939.31 defines the inchoate crime of conspiracy and provides:

[W]hoever, with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, be fined or imprisoned or both not to exceed the maximum provided for the completed crime.

which held that the plain language of § 939.31 criminalizes both bilateral and unilateral conspiracies. *Sample*, 215 Wis.2d at 507. Stellmacher concedes that there is sufficient evidence of his guilt under *Sample*,⁴ but argues that *Sample* was wrongly decided.⁵

As Stellmacher acknowledges, we are bound to follow *Sample*, which controls the outcome of this case. Only the supreme court can modify or overrule previous supreme court decisions. *Cook*, 208 Wis. 2d at 189-90. Further, we are not persuaded that certification to the supreme court is warranted.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

⁴ As stated in the parties' briefs, the evidence sufficiently establishes that Stellmacher engaged in a conspiracy to injure a person by agreeing with Kranz that Kranz would find a biker to do the job and providing Kranz with money to pay the biker, an overt act effectuating the conspiracy. Stellmacher also engaged in a conspiracy to kill another man by agreeing with Kranz and the undercover officer posing as a hit man that the officer/hit man would commit the act. Stellmacher committed overt acts by giving Kranz money to pay the hit man and by procuring an additional sum demanded by the officer/hit man.

⁵ Stellmacher argues that logic as well as the language and legislative history of WIS. STAT. § 939.31 evince the legislature's intent that the statute criminalize only "the traditional view of conspiracy," which involves "agreement between two or more individuals, each of whom in fact agreed and intended to commit the substantive crime," or a bilateral conspiracy. The State counterargues that the logic in *State v. Sample*, 215 Wis. 2d 487, 573 N.W.2d 187 (1998), is reasonable and sound and characterizes Stellmacher's arguments as a rehash of those presented to the *Sample* court.