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DISTRICT II

June 3, 2015

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

2014AP1715-CR

State of Wisconsin v. Jason T. Beaudoin (L.C. #2012CF262)

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

Jason Beaudoin appeals from a judgment of conviction of substantial battery with use of a dangerous weapon and burglary while armed with a dangerous weapon, both as a repeat offender. He also appeals from an order denying his postconviction motion alleging that the circuit court lacked subject matter jurisdiction over the burglary charge.¹ Based upon our review

¹ The postconviction motion also alleged that trial counsel was ineffective for not challenging subject matter jurisdiction over the armed burglary charge. Beaudoin does not pursue that claim on appeal.

of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).² We affirm the judgment and order.

A jury found Beaudoin guilty of forcing his way into a residence with a knife and hammer, struggling with the male occupant of the residence, and leaving the man with a cut to his hand and a stab wound to his bicep. It appears the attack was motivated by the victim's contact with Beaudoin's former girlfriend.

The question of subject matter jurisdiction is a legal issue that this court reviews *de novo*. *State v. Webster*, 196 Wis. 2d 308, 316, 538 N.W.2d 810 (Ct. App. 1995). Criminal subject matter jurisdiction is absent only where the complaint does not charge an offense known to law. *Id.* at 317.

Beaudoin claims that the crime of armed burglary based on the intent to enter a building to commit a substantial battery is a crime not known in law because substantial battery has the same intent element as misdemeanor battery—intent to cause bodily harm. *See* WIS. STAT. § 940.19. He contends that a person intending to cause bodily harm only intends a misdemeanor crime and the intent to commit a misdemeanor does not support a battery charge which requires intent to commit a felony. *See* WIS. STAT. § 943.10. He characterizes substantial battery as an “imperfect battery” resulting not from the actor's original intent but only from the nature of the victim's injuries.

We reject Beaudoin's claim that armed burglary cannot be based on the intent to commit a substantial battery. The intent element of burglary is the intent to commit a felony crime, not

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

the intent required to commit the felony crime. See *State v. Hammer*, 216 Wis. 2d 214, 221, 576 N.W.2d 285 (Ct. App. 1997) (the intent to commit a felony is one offense whose intent element may be satisfied in different ways). In *Hammer*, the jury was instructed that first-degree sexual assault, armed robbery, and “a substantial battery causing substantial bodily harm to another without consent and with intent to cause bodily harm or substantial bodily harm” are felonies. *Id.* at 218. The *Hammer* court concluded that the intent to commit any of those felonies, including battery with intent to cause bodily harm that results in substantial bodily harm, satisfied the requisite intent for the crime of burglary. *Id.* at 222.

It is appropriate to place focus on Beaudoin’s intent when he entered the residence with a knife and hammer. Beaudoin concedes, as he must, that one can be guilty of substantial battery for causing substantial bodily harm and intending to cause substantial bodily harm. The circuit court recognized this and found that entry with a knife and hammer reflects a desire to cause substantial bodily harm, or, in other words, to commit felony level battery.³ There was no defect in subject matter jurisdiction over the armed burglary charge.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

³ The jury was instructed accordingly to determine that “[t]he defendant entered the building with intent to commit substantial battery, that is, that the defendant intended to commit substantial battery at the time the defendant entered the building.”