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DISTRICT II

May 10, 2017

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

2016AP864-CR

State of Wisconsin v. Damon T. Green (L.C. # 2014CF338)

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

Damon T. Green appeals from a judgment of conviction entered upon a jury's guilty verdicts and an order denying his postconviction motion. Green argues that the trial evidence was insufficient to support his two misdemeanor bail jumping convictions. 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 (2015-16).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

For his role in a bar fight occurring on June 1, 2014, Green was charged with substantial battery, two counts of possessing drug paraphernalia, and two counts of misdemeanor bail jumping. The complaint alleged that at the time of the bar fight, Green was released on and subject to the conditions of a misdemeanor bail bond in Sheboygan County case No. 2014CM205 and that he violated the terms of that bond by committing new crimes on June 1, 2014.

At trial, Sheboygan County deputy clerk Mary Borstad testified that her office maintains records of bail bonds. She explained that a bail bond provides conditions that a defendant must follow during the pendency of his or her case. She provided a certified copy of the bail bond in *State v. Damon T. Green*, No. 2014CM205, and testified it reflected Green's signature dated March 10, 2014, and contained the condition that Green "shall not commit any crime." She testified that she had retrieved the bond and made a certified copy the previous day, which would have been March 10, 2015. She testified that when retrieving the bond the day before, she did not look to see if the file remained open. She agreed there was no indication that 2014CM205 was closed or that its bond was not active on June 1, 2014. Green did not cross-examine Borstad. In closing, Green argued that the State failed to prove he committed the battery or paraphernalia charges and therefore, failed to prove he violated the bond conditions in 2014CM205. The jury convicted Green on all counts.

Green filed a postconviction motion claiming there was insufficient evidence to support his bail jumping convictions. He argued that Borstad's testimony did not establish that the bond in 2014CM205 was in effect at the time he committed the new crimes. The circuit court denied the motion. Green appeals.

Green maintains that the evidence was insufficient to support the jury's verdict because Borstad testified she did not look to see if 2014CM205 was still active. In essence, Green contends that in order for the State to meet its burden, Borstad needed to specifically testify that 2014CM205 remained open on June 1, 2014. On appeal, we will sustain 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). "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, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it." *Poellinger*, 153 Wis. 2d at 507.

We conclude that a reasonable juror could have found beyond a reasonable doubt that Green was subject to the bond in 2014CM205 when he committed the instant crimes. Borstad confirmed there was "no indication that the case was closed or that the bond was no longer active as it relates to June 1, of '14." The jury was not presented with any evidence to the contrary and could rely on Borstad's undisputed testimony to find that the case remained open on June 1, 2014.

Further, we agree with the State that in the absence of contradictory evidence, the jury could permissibly use its common sense to conclude that a defendant who signed a bond on March 10, 2014, was still subject to its terms less than three months later. See *State v. Smith*, 2012 WI 91, ¶36, 342 Wis. 2d 710, 817 N.W.2d 410 ("We do not, and should not, ask jurors to leave their common sense behind at the courthouse door."). Green's argument that "the State has not shown that a jury would have any knowledge" about the amount of time a defendant

“typically spend[s] on bond” ignores that the jury knew the instant case which occurred on June 1, 2014, remained pending nine months later, as of March 2015, the time of trial. It also disregards the average person’s frequent exposure to information about the criminal justice system, whether through the media or personal experience.

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.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals