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DISTRICT III

September 1, 2020

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

2019AP396-CR State of Wisconsin v. Eric L. Hilson (L. C. No. 2017CF645)

Before Stark, P.J., Hruz and Seidl, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Eric Hilson appeals a judgment, entered upon a jury's verdict, convicting him of felony bail jumping. Hilson challenges the sufficiency of the evidence to support the jury's verdict.[1] Based upon our review of the briefs and records, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[2] We reject Hilson's arguments and summarily affirm the judgment.

The State charged Hilson with felony bail jumping after his June 9, 2017 termination from participation in the Community Transition Center (CTC) program.[3] The complaint alleged that Hilson was terminated from the program after he tested positive for tetrahydrocannabinol (THC) on one occasion, had a positive breathalyzer test on another occasion, and missed required drug and alcohol testing on four successive dates. Hilson pleaded not guilty, and the matter proceeded to trial.

At trial, the jury was informed that the parties stipulated to the following facts: (1) Hilson was charged with a felony; (2) Hilson was released from custody on bond with the condition that he *report to the CTC within twenty-four hours for testing and programming*; (3) Hilson's bond was in effect between May 15, 2017, and June 9, 2017; and (4) Hilson signed

[1] Hilson's brief-in-chief also argued that the circuit court erred by denying his request for an alternate instruction on the burden of proof. Hilson asserted that the burden of proof jury instruction, WIS JI—CRIMINAL 140, violated his due process rights by impermissibly lowering the State's burden of proof. After Hilson's brief-in-chief was filed, our supreme court decided ***State v. Trammell***, 2019 WI 59, 387 Wis. 2d 156, 928 N.W.2d 564, in which the court held "that WIS JI—CRIMINAL 140 does not unconstitutionally reduce the State's burden of proof below the reasonable doubt standard." *See* ***Trammell***, 387 Wis. 2d 156, ¶67. In a letter to this court and, again, in his reply brief, Hilson states that in light of the ***Trammell*** decision, he is pursuing only his challenge to the sufficiency of the evidence. We therefore deem his claim of "instructional error" abandoned, and we need not discuss it further.

[2] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

[3] A second count of bail jumping was dismissed on the State's motion.

the bond agreement. The State's only witness was Amanda Lonsdorf, who was Hilson's case manager at the CTC.

Lonsdorf testified that Hilson was initially ordered to report to the CTC on March 31, 2017, but the referral was terminated on April 17, 2017, because Hilson failed to complete intake. Hilson was again referred to the CTC in relation to the same bond and, on May 10, 2017, he completed the intake process, which included being provided information about expectations and rules for the program. Lonsdorf testified that after Hilson failed to appear for required drug and alcohol testing on May 17 and 18, 2017, she telephoned him and informed Hilson that he would be taken into custody for those violations. According to Lonsdorf, Hilson subsequently missed four days of scheduled tests before he was terminated from the program on June 9, 2017.

After the State rested, Hilson moved to dismiss the charge against him claiming the State failed to prove its case. The circuit court denied the motion, and the jury ultimately found Hilson guilty of the crime charged. The court ordered Hilson to pay a $100 fine. This appeal follows.

On appeal, Hilson renews his challenge to the sufficiency of the evidence. "[W]hether the evidence was sufficient to sustain a verdict of guilt in a criminal prosecution is a question of law" that this court reviews de novo. ***State v. Smith***, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. We must uphold Hilson's 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." *See* ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). If there is a possibility that the jury "could have drawn the appropriate inferences from the

evidence adduced at trial to find the requisite guilt," we must uphold the verdict even if we believe that the jury "should not have found guilt based on the evidence before it." ***Id.*** at 507.

It is the jury's function to decide the credibility of witnesses and to reconcile any inconsistencies in the testimony. ***State v. Toy***, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985). Thus, if more than one inference can be drawn from the evidence, this court will follow the inference that supports the jury's finding "unless the evidence on which that inference is based is incredible as a matter of law." ***Poellinger***, 153 Wis. 2d at 506-07. Further, "[f]acts may be inferred by a jury from the objective evidence in a case." ***Shelley v. State***, 89 Wis. 2d 263, 273, 278 N.W.2d 251 (Ct. App. 1979).

To convict Hilson of felony bail jumping, the State was required to prove that: (1) Hilson was charged with a felony; (2) Hilson was released on bond; and (3) Hilson intentionally failed to comply with the terms of the bond. *See* WIS JI—CRIMINAL 1795. As noted above, Hilson stipulated to the first two elements and, therefore, challenges only the sufficiency of the evidence to establish that he intentionally failed to comply with the terms of the bond. Hilson's challenge is based on his claim that the bond only required that he report to the CTC within twenty-four hours of his release, and it did not include a requirement that he "comply with CTC requirements on a continuing basis." Citing the rule of lenity,[4] Hilson argues the bond conditions must be strictly construed against the State, similar to ambiguous contract language being construed against its drafter. *See generally* ***Converting/Biophile Labs., Inc. v. Ludlow Composites Corp.***,

[4] The rule of lenity is a canon of strict construction, ensuring fair warning by applying criminal statutes to "conduct clearly covered." ***State v. Guarnero***, 2015 WI 72, ¶26, 363 Wis. 2d 857, 867 N.W.2d 400 (citation omitted).

2006 WI App 187, ¶23, 296 Wis. 2d 273, 722 N.W.2d 633. Hilson thus claims the third element is not satisfied because the State did not prove an intentional failure to simply report to the CTC as ordered. We are not persuaded.

Hilson provides no authority for applying the rule of lenity in interpreting conditions of a bond. In any event, we conclude that the plain language of the bond required Hilson to do more than merely appear at the CTC. It required that he do so for "testing and programming." The jury could reasonably infer that Hilson understood he was expected to participate in testing and programming—not simply show up once. His failure to appear for testing after repeated warnings showed that he failed to do so intentionally. Because the parties' stipulations and the evidence at trial are sufficient to satisfy the elements of felony bail jumping, we affirm.

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals