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**DISTRICT I**

November 16, 2021

To:

Hon. Glenn H. Yamahiro  
Circuit Court Judge  
Electronic Notice

John Barrett  
Clerk of Circuit Court  
Milwaukee County  
Electronic Notice

John D. Flynn  
Electronic Notice

Angela Conrad Kachelski  
Electronic Notice

Eric Michael Muellenbach  
Electronic Notice

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

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2020AP2122-CR	State of Wisconsin v. Clarence Lee Franklin, Jr. (L.C. # 2018CM63)
2020AP2123-CR	State of Wisconsin v. Clarence Lee Franklin, Jr. (L.C. # 2017CF5599)

Before Brash, C.J., Donald, P.J., and White, J.

**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).**

Clarence Lee Franklin, Jr., appeals judgments convicting him of multiple crimes, including three counts of failing to pay child support and one count of receiving compensation for human trafficking as a habitual criminal. Franklin argues that: (1) the circuit court erroneously denied his motion for a mistrial made after the State's opening argument; and (2) there was insufficient evidence to support his conviction for receiving compensation for human trafficking. Based upon

a review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> We affirm.

Franklin first argues that the circuit court erroneously exercised its discretion when it denied his motion for a mistrial made after the State’s opening argument. During the opening argument, the prosecutor informed the jury that Franklin made no child support payments for his two daughters since he was first ordered to pay support in 2006 or 2007, with the exception of one payment that was made after Franklin’s federal tax return was seized. Franklin’s counsel moved for a mistrial, arguing that Franklin was charged with only three counts of failure to pay child support and they covered shorter, more specific time frames during 2015 through 2017. Franklin’s counsel argued that the prosecutor impermissibly brought up prior “bad acts” by telling the jury that Franklin had not paid child support during multiple years for which Franklin was not charged with failing to pay child support. The circuit court denied the motion.

“A motion for mistrial is committed to the sound discretion of the circuit court.” *State v. Ford*, 2007 WI 138, ¶28, 306 Wis. 2d 1, 742 N.W.2d 61. The circuit court erroneously exercises its discretion when it makes an error of law or fails to base its decision on the facts relevant to the motion. *See id.*

The circuit court decided that the prosecutor’s argument was made for permissible purposes, to establish the context for the three charges of failing to pay child support and to establish why the mother of Franklin’s children never had a child support debit card issued to her, which was relevant to one of the charges. The circuit court cautioned the State against making

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

repeated references to Franklin's failure to pay child support during time periods outside those for which he was charged but denied the motion for mistrial. The circuit court made a reasonable decision based on the circumstances and in accord with the appropriate law. Therefore, we conclude that the circuit court appropriately exercised its discretion when it chose to simply admonish the State as opposed to granting Franklin's motion for a mistrial.

Franklin next argues that there was insufficient evidence to support his conviction for receiving compensation from human trafficking. A person commits the crime of receiving compensation from human trafficking when the person knowingly receives compensation from the earnings of a prostitute. WIS. STAT. § 940.302(2)(c). When reviewing the sufficiency of the evidence, we look at whether "the evidence, viewed most favorably to the [S]tate and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citation omitted). Franklin bears the burden of showing that the evidence could not reasonably support a finding of guilt. *See State v. Beamon*, 2013 WI 47, ¶21, 347 Wis. 2d 559, 830 N.W.2d 681.

Although the evidence was circumstantial, there was sufficient evidence of guilt presented to the jury. Tara Ferguson, an investigator with the Child Support Enforcement Unit of the Milwaukee County District Attorney's Office, testified that she noticed that Franklin had over \$4,700 in a JPay account, which is an account used by friends and family of incarcerated individuals to add money to the inmate's account. She testified that the account caught her eye because it was one of the highest balances she had ever seen in a JPay account. After confirming that Franklin owed child support, Ferguson informed the child support attorney, who seized \$4,000 from the account. Ferguson testified that she listened to recordings of Franklin's jail phone calls

to determine why Franklin had so much money in his account. She learned from the recordings that the money had been deposited by Victoria Telford, Franklin's girlfriend, who was earning money through prostitution. Documentary evidence and Ferguson's testimony showed that Telford deposited more than \$4,000 into Franklin's account in just twenty-seven days. Recordings of Franklin's phone calls to Telford from the jail that were played for the jury showed that Franklin knew that Telford was earning the money through prostitution to put in his account for him to post bail. Based on the testimony, documentary evidence, and the phone call recordings, there was sufficient evidence to support the jury's verdict finding Franklin guilty of compensation for human trafficking.

Upon the foregoing,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*