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DISTRICT I

April 4, 2023

To:

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

2020AP1303-CR	State of Wisconsin v. Tomaz Soloman Robinson (L.C. # 2017CF3051)
2020AP1304-CR	State of Wisconsin v. Tomaz Soloman Robinson (L.C. # 2017CF3284)
2020AP1305-CR	State of Wisconsin v. Tomaz Soloman Robinson (L.C. # 2017CF3595)
2020AP1306-CR	State of Wisconsin v. Tomaz Soloman Robinson (L.C. # 2018CF871)
2020AP1307-CR	State of Wisconsin v. Tomaz Soloman Robinson (L.C. # 2018CF2210)

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).

Tomaz Soloman Robinson appeals from judgments, entered upon a jury's verdicts, convicting him of seven offenses in five cases, arguing the cases were improperly joined for trial. Based upon our review of the briefs and records, we conclude at conference that these cases are

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ The judgments are summarily affirmed.

Robinson was alleged to have attempted or committed armed robberies on three different dates: June 18, June 24, and June 25, 2017. On June 18, O.M.F. had been talking to a woman² in a bar and stepped outside to the parking lot with her. Outside, Robinson approached O.M.F. and drew a gun. He told O.M.F., “You know what time it is.” Robinson attempted to go through O.M.F.’s pockets himself. O.M.F. ran, and Robinson shot him in the thigh. For this incident, Robinson was charged in Milwaukee County Circuit Court case No. 2017CF3595 with first-degree recklessly endangering safety, attempted armed robbery as a party to a crime, and possession of a firearm by a felon, all as a habitual criminal. We will refer to these as “the O.M.F. charges.”

On June 24, M.W. was outside near the trunk of his car. Robinson approached him and pointed a gun at him, telling him to get on the ground. Robinson rifled through M.W.’s pockets and took about \$100 cash and a bank card, along with an amplifier from the open trunk. M.W. was able to flag down nearby police for help. They pursued Robinson, who had fled in a car.³ Robinson crashed the car and escaped on foot. However, his driver’s license was found next to the crashed vehicle, his fingerprint was on the driver’s door, and M.W.’s bank card and amplifier

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² The woman was acquainted with Robinson and his girlfriend, Keona Hicks, who was also at the bar that night. Robinson allegedly left the scene in a vehicle driven by Jamarr Hicks, Keona’s brother.

³ The registered owner of the vehicle was Keona Hicks.

were found along Robinson's escape route, as was a cell phone with Robinson's fingerprint. Robinson was charged in Milwaukee County Circuit Court case No. 2017CF3051 with armed robbery. Several months later, Robinson enlisted the help of a former cellmate to contact M.W. and see if he would be coming to court. The cellmate confirmed Robinson asked for his help. Thus, Robinson was charged in Milwaukee County Circuit Court case No. 2018CF2210 with felony intimidation of a witness. We will refer to these as "the M.W. charges."

On June 25, E.R. and a friend were standing outside a convenience store, talking to and flirting with a woman who used to date Robinson. Robinson exited the store and approached, asking E.R., "What you got in your pockets?" Robinson then brandished a gun and reached into E.R.'s pockets, taking a small amount of cash. Robinson began returning to the vehicle in which he arrived,⁴ but turned back and shot at E.R. and his friend. E.R.'s friend returned fire. A teenager who had been in front of the store with his own friends was shot and killed. Robinson was charged in Milwaukee County Circuit Court case No. 2017CF3284 with possession of a firearm by a felon as a habitual criminal and in Milwaukee County Circuit Court case No. 2018CF871 with felony murder for the teen's death.⁵ We will refer to these as "the E.R. charges."

The State moved to join all five cases for trial. After briefing and argument, the trial court granted the motion over Robinson's objections. A jury convicted Robinson on all counts,

⁴ Jamarr Hicks admitted he drove Robinson to the store

⁵ The felony murder charge was issued later because the State did not have evidence to prove the predicate felony of armed robbery at the time it issued the firearm charge.

and the trial court imposed consecutive and concurrent sentences totaling forty-five years of initial confinement and nineteen years of extended supervision. Robinson appeals, claiming the trial court erroneously joined the five cases for trial.

Two or more crimes may be charged in the same complaint if the crimes charged (1) are of the “same or similar character”; (2) are based on “the same act or transaction”; (3) are “connected together”; or (4) “constitut[e] parts of a common scheme or plan.” *See State v. Salinas*, 2016 WI 44, ¶31, 369 Wis. 2d 9, 879 N.W.2d 609 (quoting WIS. STAT. § 971.12(1)). The same framework applies when the court is asked to join two or more complaints. *See WIS. STAT. § 971.12(4)*.

“The initial decision on joinder is a question of law that we review de novo.” *Salinas*, 369 Wis. 2d 9, ¶30. We owe no deference to the trial court’s decision, but the joinder statute should be broadly construed in favor of initial joinder. *See State v. Locke*, 177 Wis. 2d 590, 596, 502 N.W.2d 891 (Ct. App. 1993). Our supreme court “‘has historically favored’ initial joinder particularly when the charged crimes were all ‘committed by the same defendant.’” *Salinas*, 369 Wis. 2d 9, ¶36 (citation omitted).

The trial court articulated an extensive legal analysis in joining the charges, explaining how all four statutory provisions justified joinder of these cases. With respect to the E.R. charges, Robinson’s trial attorney had conceded that they “obviously” should be joined with each other; as the trial court stated, “[t]hose are literally the same actions.” With respect to the M.W. charges, the trial court explained that they were “connected together” because the only reason to have committed the witness intimidation was to “prevent punishment” for M.W.’s armed

robbery. *See id.*, ¶43. Robinson does not dispute his trial attorney’s concession or otherwise directly challenge these particular joinders; rather, the argument focuses on whether the three sets of robbery cases should have been joined as one.

The trial court explained in some detail how the cases could be joined under the various statutory provisions. First, it considered the robberies to be of the “same or similar character,” as they happened within less than a five-mile radius, over a short period of time, and had overlapping evidence including the allegation that Robinson personally rifled through each victim’s pockets.⁶

The trial court considered the robberies to be “connected together,” based on several factors. In determining whether separate crimes are connected together for purpose of initial joinder, the court should consider a variety of factors, including but not limited to:

- (1) are the charges closely related; (2) are there common factors of substantial importance; (3) did one charge arise out of the investigation of the other; (4) are the crimes close in time or close in location, or do the crimes involve the same victims; (5) are the crimes similar in manner, scheme or plan; (6) was one crime committed to prevent punishment for another; and (7) would joinder serve the goals and purposes of WIS. STAT. § 971.12.

See Id., ¶43. Specifically, the trial court considered the robberies “closely related” as a series of armed robberies in a short period of time, two of which resulted in a shooting; the fact of Robinson going through each victim’s pockets was a “common factor[] of substantial importance”; the robberies were both close in time and close in location; and joinder would serve

⁶ The repeated involvement of the Hicks siblings also provide a degree of overlap.

the goals of convenience for the State and convenience and advantage for Robinson. *See id.*, ¶31.

The trial court further concluded that the robberies somewhat constituted a “common scheme or plan,” but noted that this provision was “not discussed quite as precisely,” in part because the trial court believed it was subsumed into the “connected together” discussion. Nevertheless, the trial court commented that it had already explained the similarities and differences in the cases and that this provision would also support joinder.

On appeal, the only basis with which Robinson takes issue is the trial court’s conclusion that the crimes were “parts of a common scheme or plan.” The State contends that because Robinson does not challenge the other bases for joinder, he has conceded the validity of those rulings.⁷ *See Sands v. Menard*, 2016 WI App 76, ¶52, 372 Wis. 2d 126, 887 N.W.2d 94. We agree. Robinson also declined to file a reply brief, so he is deemed to have conceded the State’s argument. *See United Co-op. v. Frontier FS Co-op.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578; *see also Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

We further note, however, that even if the State erred in granting initial joinder of the robberies, any error in doing so was harmless because of the overwhelming evidence of Robinson’s guilt. *See State v. Davis*, 2006 WI App 23, ¶21, 289 Wis. 2d 398, 710 N.W.2d 514.

⁷ We also note that Robinson did not subsequently seek to sever the charges after the joinder decision. *See* WIS. STAT. § 971.12(3); *see also State v. Locke*, 177 Wis. 2d 590, 596-97, 502 N.W.2d 891 (Ct. App. 1993).

O.M.F. identified Robinson from a photo array, the woman O.M.F. was speaking to actually knew Robinson, and both independently testified that Robinson said, “you know what time it is” when he approached O.M.F. The encounter was recorded by a security camera. Robinson’s supposed alibi witness refused to testify on his behalf. Robinson’s identification and fingerprints were found on and near the vehicle involved after M.W.’s robbery, and items taken from M.W. were found in Robinson’s flight path. M.W. identified Robinson in a photo array. Robinson’s sister, a supposed alibi witness for this offense, also refused to testify for him. The State played a prison video showing Robinson giving his former cellmate a piece of paper moments before the cellmate is shown making a phone call with Robinson nearby. The robbery of E.R. and subsequent shooting that led to the teenager’s death were captured on two different surveillance cameras. E.R.’s friend identified Robinson in a photo array. When interviewed after the shooting, Robinson gave at least two false accounts before telling a third version at trial. This is not the complete recitation of evidence against Robinson, but it is clear that there is no reasonable possibility joinder contributed to the convictions. *See id.*

Upon the foregoing, therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* 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