STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Appeal Case No. 2017AP000364-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

ANTHONY IVEN JONES, a/k/a HASHIM HASAN

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE MICHELLE ACKERMAN HAVAS AND CYNTHIA MAE DAVIS, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

I. Was the jury's verdict supported by sufficient evidence?

Trial Court Answered: Yes.

II. Should the domestic abuse assessment have been applied to Jones' conviction?

Trial Court Answered: Yes.

III. Should the Judgment of Conviction be Amended to Remove the Name Anthony Jones so it only reads Hashim Hasan?

Trial Court Answered: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

On December 5, 2015, the State charged Jones with Bail Jumping, in violation of Wis. Stat. § 946.49(1)(a). (R1) In the new case, 15CM4252, the State alleged that Jones violated a condition of his bond—the No Contact Order with T.W.—in his open case, 15CM3542.

On March 21, 2016, Jones' trial began on both 15CM3542 and 15CM4252. T.W. testified, related to the December 3 incident, that Jones spoke to her when their son put him on speaker phone in her presence. (R38:16) She testified that he addressed her directly and threatened to break the restraining order. (R38:16) She also testified that he was near her residence when he threatened her and that she could hear him yelling through the window. (R38:16).

Officer O'Malia also testified. (R38) He testified that he arrived at T.W.'s residence after being dispatched here. (R38:64) He testified that when he arrived, he located Jones approximately two houses north of T.W.'s residence. (R38:64) He identified a map on which he had marked the position of T.W.'s residence and the position of Jones when he arrived. (R38:64) He also testified, based on his training and experience, that 92 feet was an accurate measurement of the distance between Jones and T.W.'s residence. (R38:67) He was also able to confirm that T.W. told him that Jones threatened to break all the restraining orders when their son put him on speakerphone in the presence of T.W. (R38:68)

Finally, Jones himself testified. (R38) He testified that he knew about the No Contact Order and read portions of it for the jury. (R38:119) He stated that he knew he was not supposed

to have contact with T.W. and that he parked three blocks away because he knew that. (R38:120) He testified that when he learned that she was calling the police, he pulled up to her block. (R38:120)

On March 23, 2016, the jury returned verdicts of Not Guilty on all counts in 15CM3542. (R39:42-43) The jury returned a verdict of Guilty to the sole count of Bail Jumping in 15CM4252. (R39:43) Jones' trial counsel moved for a judgment notwithstanding the verdict on the Bail Jumping count, but the trial court ruled, "I do believe that there was evidence to sustain Count 5 for the jury to find in that way, so I'm denying your motion, Ms. Heaps." (R39:45)

STANDARD OF REVIEW

I. "This case requires us to review the sufficiency of evidence supporting a jury verdict. When a defendant challenges a verdict based on sufficiency of the evidence, we give deference to the jury's determination and view the evidence in the light most favorable to the State. If more than one inference can be drawn from the evidence, we must adopt the inference that supports the conviction. We will not substitute our own judgment for that of the jury unless the evidence is so lacking in probative value and force that no reasonable jury could have concluded, beyond a reasonable doubt, that the defendant was guilty."

State v. Long, 2009 WI 36, ¶ 19, 317 Wis. 2d 92, 103, 765 N.W.2d 557, 562.

II. "An appellate court reviews the circuit court's findings of fact under the clearly erroneous standard of review."

State v. Williams, 2002 WI 1, ¶ 5, 249 Wis. 2d 492, 500–01, 637 N.W.2d 733, 736.

ARGUMENT

I. THE JURY'S VERDICT IS SUPPORTED BY SUFFICIENT EVIDENCE

The jury found Jones guilty based on the evidence presented that he had violated the No-Contact Order-a condition of his bail. This evidence is cited by Jones in his brief. The court must review the jury's verdict with deference and cannot overturn it "unless the evidence is so lacking in probative value and force that no reasonable jury could have concluded, beyond a reasonable doubt, that the defendant was guilty." *State v. Long*, 2009 WI 36, ¶ 19, 317 Wis. 2d 92, 103, 765 N.W.2d 557, 562.

Jones simply alleges that the jury convicted him because "They felt compelled to find Mr. Hasan guilty of something…". (Appellant's Brief at 11) He provides no factual evidence for this proposition, nor does he cite any legal authority that would support such a finding. (Appellant's Brief at 11-12). He relies upon statements such as "It defies logic that…" and "it is clear that…" without any evidence that would make such propositions clear. In fact, "The jury is presumed to follow all instructions given. *State v. Grande*, 169 Wis. 2d 422, 436, 485 N.W.2d 282, 286 (Ct. App. 1992). In this case, the trial court properly instructed the jury as to the Bail Jumping count: "Before you can return a verdict of guilty, the evidence must satisfy you beyond a reasonable doubt that the defendant is guilty." (R39:15) Jones offers no evidence to rebut the presumption that the jury followed this instruction and returned a verdict based on the evidence.

a. The Jury's Verdict is Supported by the Testimony of Jones

Jones testified that he had signed a No Contact Order in case 15CM3542 that stated:

> It is ordered effective immediately and also as a condition of release in this case the defendant have absolutely no contact and remain at least 500 feet away from the following witnesses or victims…

(R38:119) That No Contact Order listed the initials and date of birth of his wife, T.W. (R38:120) He stated:

> But I knew I was not to have contact with her, and I knew if I was going to go in the area, that's why I parked three blocks down, and I went there. I only pulled on the block once I knew she was calling 911.

(R38:120) Jones testified that he knew he was supposed to stay away from T.W.'s residence, and that he did so until he learned that she was calling the police. (R38:120) Then he moved closer until he was three houses away. (R38:120) This is a violation of the No Contact Order. Regardless of his mental purpose, Jones knew that his conduct was a violation and constituted the crime of Bail Jumping.

b. The Jury's Verdict is Supported by the Testimony of Officer O'Malia

Officer O'Malia testified that he responded to T.W.'s residence on December 3, 2015, and that he located Jones approximately two houses north of that address. (R38:64) He further testified that, based on his training and experience, 92 feet was an accurate measurement of the distance between Jones and T.W.'s residence when he arrived. (R38:67)

Officer O'Malia further testified that he spoke to T.W., who told him that she heard Jones talking to her on the phone that her son was holding, and that Jones "yelled something about breaking all the restraining orders if people were to come to the house." (R38:67-68)

By being 92 feet away from T.W.'s residence and by threatening to break restraining orders on the phone, Jones violated the No Contact Order and committed the crime of Bail Jumping.

c. The Jury's Verdict is Supported by the Testimony of T.W.

T.W. testified that on December 3, her son was inside the house with her and was speaking with Jones by phone. (R38:15) She testified that her son put the phone on speaker

phone and that Jones knew it was on speaker phone because he talked directly to her. (R38:15) She testified:

> He said he told me if I have anybody come to the house he's going to break the restraining order. But he said all the restraining orders, but it's just one restraining order.

(R38:16) She then testified that Jones made this threat while he was standing in front of the house and that she could hear him out the window. (R38:16) She testified that Jones often parked a block away, but on December 3, he came in front of the house and remained there until police arrived. (R38:17)

T.W.'s statements were not "refuted," as Jones claims in his brief. (Appellant's Brief at 12) The trial court properly instructed the jury, "You may find the testimony of one witness is entitled to greater weight than that of another witness or even of several other witnesses." (R39:18) Contrary to Jones' argument, his testimony and that of his son could not "refute" the testimony of T.W. The jury is the fact finder who determines the credibility of witnesses.

The record is full of evidence that Jones breached the 500 foot restriction in the No Contact Order and that he spoke to T.W. in violation of the No Contact Order. While Jones does not find this evidence compelling, the jury was convinced beyond a reasonable doubt that he committed the crime of Bail Jumping. The jury's verdict should not be set aside.

II. THE TRIAL COURT DID NOT ERR BY IMPOSING THE DOMESTIC ABUSE ASSESSMENT

a. The Domestic Abuse Assessment is Properly Applied Under a Wis. Stat. § 973.055(1)

The domestic abuse assessment (hereafter "the Assessment") is required in this case. Wis. Stat. § 973.055(1) states that the court "shall" impose the assessment when two requirements are met: 1. A specified crime, and 2. A finding that the crime involved an act by Jones against his spouse.[1]

[1] Wis. Stat. § 973.055(1) lists a number of other qualifying relationships. Because Jones and T.W. were still legally married at the time of the

There is no dispute that Bail Jumping in violation of Wis. Stat. § 946.49 is a specified crime. There is also no dispute that the factual basis for Jones' Bail Jumping charge was that he violated the No Contact Order protecting T.W. This constitutes an act against T.W.

Jones does not argue that the Assessment does not apply under Wis. Stat. § 973.055(1). Therefore, unless the court adopts an interpretation of this statute that is more stringent than the plain meaning of the text, Jones cannot prevail on this point.

b. The Domestic Abuse Assessment is Properly Applied Even if the Court Requires an Additional Finding

If the court interprets Wis. Stat. § 973.055(1) to require an additional element, an act of domestic abuse as defined by Wis. Stat. § 968.075, the Assessment is still properly applied.[2]

Jones argues, based on an unpublished decision, that Wis. Stat. § 973.055(1) not only requires the two findings in the text, but also requires a finding that the offense meets the definition of "domestic violence" as defined in Wis. Stat. § 968.075.[3] Jones conduct fits this definition because his actions caused T.W. to reasonably fear that he would imminently engage in impairing her physical condition. Per T.W.'s testimony, Jones threatened that he would break "all the restraining orders" while he was standing outside her house. (R38:16)

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incident, that is the relationship the State will reference for the purpose of this brief. Further, because there is no dispute that Jones was an adult, the State will not address that component.

[2] The State does contend that Wis. Stat. § 973.055(1) should be construed narrowly and its plain-text meaning should be applied. It is contrary to that plain-text reading to require an additional finding that Wis. Stat. § 968.075 also applies. However, because Jones fails to show that the Assessment is imposed inappropriately under either standard, the Court's interpretation of Wis. Stat. § 973.055(1) is largely immaterial to this case.

[3] In its denial of Jones' postconviction motion, the court noted that Jones relied upon an unpublished decision and that an unpublished decision by one judge may only be cited for persuasive value. (R31:3) Again in Jones' appellate brief, he fails to note that his only cited case on the issue is an unpublished decision and is therefore not binding upon the Court.

When the trial court applied the Assessment, it made a finding that Jones' conduct constituted an act of domestic violence under Wis. Stat. § 968.075. (R31) This court does not overturn the trial court's factual findings unless they are clearly erroneous. *State v. Williams*, 2002 WI 1, ¶ 5, 249 Wis. 2d 492, 500–01, 637 N.W.2d 733, 736. The trial court's findings are not clearly erroneous and should not be overturned.

III. THE TRIAL COURT DID NOT ERR BY LEAVING THE NAME ANTHONY JONES ON THE JUDGMENT OF CONVICTION

The trial court found that keeping the name Anthony Iven Jones on the judgment of conviction was "in the interest of the public and law enforcement." (R31) Because that finding is not clearly erroneous, this court should not overturn it.

Jones posits that it would be more beneficial for law enforcement to associate the judgment of conviction with his new legal name, Hashim Hasan. This argument is without merit because the judgment of conviction lists both names and no interest would be served by removing the name Anthony Iven Jones.

CONCLUSION

For the forgoing reasons, the State respectfully requests that the court uphold the Circuit Court's judgment of conviction.

Dated this _____ day of March, 2018.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 2,224.

_____ _____

Date Benjamin Verhulst
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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

_____ _____

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