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OF WISCONSIN**

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Appeal No. 2018AP001953 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

Vs.

MELODIE C. TAYLOR,

Defendant-Appellant.

ON APPEAL FROM A FINAL ORDER ENTERED
ON DECEMBER 11, 2017 IN THE CIRCUIT COURT
FOR GRANT COUNTY, THE HONORABLE CRAIG
R. DAY PRESIDING

BRIEF AND APPENDIX OF
DEFENDANT-APPELLANT

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ISSUE PRESENTED

- I. Whether an Underlying Crime is Required to Charge a Defendant with Bail Jumping Based on the Language of Wis. Stat. § 946.49?
- II. Did the State Present Sufficient Evidence to show that Ms. Taylor was Charged with an Underlying Misdemeanor Crime prior to the Charge of Misdemeanor Bail Jumping Violation of Wis. Stat. § 946.49(1)(a)?

CIRCUIT COURT'S RULING

- I. The Circuit Court Orally Denied Ms. Taylor's Motion to Dismiss for Failure to State a Crime, Ruling that an Arrest, not a Charge, is Sufficient for a Subsequent Bail Jumping Charge.
- II. The Circuit Court Granted Judgment on the Verdict of Guilty, Denying Ms. Taylor's Objection to Judgment in Accordance with the Verdict.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Publication may be warranted to clarify the language of Wis. Stat. § 946.49. Ms. Taylor does not request oral argument.

STATEMENT OF THE CASE

This is an appeal from a judgment of conviction in the Circuit Court for Grant County, Branch 2, the Honorable Craig R. Day, presiding.

On July 12, 2017, the State charged Ms. Taylor with Misdemeanor Bail Jumping in violation of Wis. Stat. § 946.49(1)(a). (R 2). On July 19, 2017, Ms. Taylor, by her attorney, filed a Motion to Dismiss the Complaint for Failure to Charge a Crime. (R 5). The Motion to Dismiss challenges the criminal complaint because Ms. Taylor

was never charged with a crime, which is required for a bail jumping charge under Wis. Stat. § 946.49(1). (R 5: 1-2). At Ms. Taylor's Initial Appearance, on July 31, 2017, the defense argued for the motion to dismiss, and the State opposed the motion. (R 36). On August 21, 2017, the circuit court orally denied the motion to dismiss. (R 37: 6).

On September 25, 2017, Ms. Taylor stood mute on all counts. (R 38: 3). The circuit court then entered a not guilty plea on Ms. Taylor's behalf. (R 38: 3). After a jury trial on December 8, 2017, the jury found Ms. Taylor guilty of bail jumping as charged in the complaint. (R 42: 65). The circuit court sentenced Mr. Taylor to pay a fine, court costs, and surcharges. (R 28).

Ms. Taylor filed a timely Notice of Intent to Seek Postconviction Relief and a timely Notice of Appeal. (R 27; R 30).

STATEMENT OF FACTS

On June 24, 2017, the Platteville Police Department responded to a disturbance at the home of Melodie Taylor. (R 42: 18). After arriving at the residence, the police arrested Ms. Taylor for disorderly conduct. (R 42: 19). Ms. Taylor was taken into custody and released on a bail bond of \$150. (R 42: 19-20). One condition of the bail bond was that Ms. Taylor not consume alcohol or drugs. (R 42: 20).

On July 9, 2017, the Platteville Police Department responded to another disturbance involving Melodie Taylor. (R 42: 22). When talking with the police on July 9, 2017, Ms. Taylor admitted that she had been drinking alcohol that night. (R 42: 23). The conditions of Ms. Taylor's bond were still in effect on July 9, 2017. (R 42: 23-24). Prior to July 9, 2017, Ms. Taylor contacted the police to discuss the bond. (R 42: 41). The police told Ms. Taylor that if she did not receive anything in a couple of days, then she can assume she will not be charged with any crime. (R 42: 41). Ms. Taylor did not receive anything, so she assumed she was not going to be charged

with anything. (R 42: 41). Ms. Taylor then believed she was not required to follow the terms of her bond anymore since she was not charge with any crime. (R 42: 41).

On July 12, 2017, the State charged Ms. Taylor with Misdemeanor Bail Jumping in violation of Wis. Stat. § 946.49(1)(a). (R 2). On July 19, 2017, Ms. Taylor, by her attorney, filed a Motion to Dismiss the Complaint for Failure to Charge a Crime. (R 5). The Motion to Dismiss challenges the criminal complaint because Ms. Taylor was never charged with a crime, which is required for a bail jumping charge under Wis. Stat. § 946.49(1). (R 5: 1-2). At Ms. Taylor’s Initial Appearance, on July 31, 2017, the defense argued for the motion to dismiss, and the State opposed the motion. (R 36). On August 21, 2017, the circuit court orally denied the motion to dismiss. (R 37: 6).

On September 25, 2017, Ms. Taylor stood mute on all counts. (R 38: 3). The circuit court then entered a not guilty plea on Ms. Taylor’s behalf. (R 38: 3). After a jury trial on December 8, 2017, the jury found Ms. Taylor guilty of bail jumping as charged in the complaint. (R 42: 65).

ARGUMENT

II. An Underlying Crime of a Misdemeanor or Felony is Required to Charge a Defendant with Bail Jumping under Wis. Stat. § 946.49.

A. Circuit Court Ruling.

On July 19, 2017, Ms. Taylor, by her attorney, filed a Motion to Dismiss the Complaint for Failure to Charge a Crime. (R 5). On August 21, 2017, the circuit court orally denied the motion to dismiss. (R 37: 6).

B. Standard of Review.

The sufficiency of a criminal complaint is a question of law that this Court reviews de novo. *State v. Manthey*, 169 Wis.2d 673, 685, 487 N.W.2d 44 (Ct.App.1992).

C. Applicable Legal Standard.

A criminal complaint must set forth facts that are sufficient to conclude that the defendant probably committed the crime charged in the criminal complaint. *State v. Bembenek*, 111 Wis.2d 617, 626, 331 N.W.2d 616 (Ct.App.1983). When the sufficiency of the criminal complaint is challenged, the facts alleged in the complaint must be sufficient to establish probable cause, that a crime has been committed. *Id.* Where reasonable inferences may be drawn establishing probable cause, and equally reasonable inferences may be drawn to the contrary, the criminal complaint is sufficient. *Manthey*, 169 Wis.2d at 688–89, 487 N.W.2d 44.

D. Legal Argument

On July 12, 2017, the State charged Ms. Taylor with Misdemeanor Bail Jumping in violation of Wis. Stat. § 946.49(1)(a). (R 2). According to Wis. Stat. § 946.49(1), “Whoever, having been released from custody under ch. 969, intentionally fails to comply with the terms of his or her bond is: (a) If the offense with which the person is charged is a misdemeanor, guilty of a Class A misdemeanor.” The Criminal Complaint states that Ms. Taylor was released on bond, after her *arrest*. (R 2: 1). The Criminal Complain then states that Ms. Taylor failed to comply with the conditions of her bond but does not state that Ms. Taylor was ever *charged* with a misdemeanor. (R 2).

Statutory interpretation begins with the language of the statute. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124. If the meaning of the statute is plain, the inquiry ordinarily stops there. *Id.* Courts will inquire if there is technical or specially-defined words or phrases or the context is important to the meaning. *Id.* at ¶ 45-46. However, Wisconsin courts ordinarily do not consult extrinsic sources of statutory interpretation unless the language of the statute is ambiguous. *Id.* at 50.

The language of Wis. Stat. § 946.49(1)(a) is plain and does not contain technical or specially-defined words or phrases and the context is not important to the meaning. Wis. Stat. § 946.49(1)(a) requires a person to be *charged* with a misdemeanor. The language in the statute does not allow for a conviction based on bail relating to an *arrest*.

Furthermore, according to Wis. Stat. § 968.01(2), “The complaint is a written statement of the essential facts constituting the offense charged.” After a complaint has been issued, it shall be filed with a judge and either a warrant or summons shall be issued, or the complaint shall be dismissed. Wis. Stat. § 968.02(2). When a person is arrested without a warrant and brought before a judge, a complaint shall be filed forthwith. Wis. Stat. § 970.01(2). The language of the statutes, taken as a whole, indicate that a person is not *charged* with a crime until a criminal complaint has been filed. The purpose of the criminal complaint is for a neutral judge to determine if the defendant should be charged with the crime. If the judge does not find probable cause, the judge shall dismiss the complaint. Wis. Stat. § 968.03.

Bond conditions are a significant burden on a person’s liberty. The statutes together insure that a person on bond is taken before a neutral judge to determine not only if the person should be charged with a crime, but also if the bond conditions should continue. If a judge determines a crime cannot be charged, and dismisses the criminal complaint, the bond conditions will not continue. In this case, the State chose to not file charges against Ms. Taylor for the events that led to the bail conditions. Since the State chose to not file charges for the allegations that led to the bond conditions, the bond conditions should have been dismissed as well.

E. Summary.

On July 12, 2017, the State charged Ms. Taylor with Misdemeanor Bail Jumping in violation of Wis. Stat. § 946.49(1)(a). (R 2). According to Wis. Stat. § 946.49(1), “Whoever, having been released from custody under ch. 969, intentionally fails to comply with the terms of his or her bond is: (a) If the offense with which the person is

charged is a misdemeanor, guilty of a Class A misdemeanor.” Based on the plain language of the statute, a defendant must be charged with a misdemeanor to face a criminal charge of Misdemeanor Bail Jumping. Since Ms. Taylor was never charged with a misdemeanor offense for the allegations that led to her bail conditions, she should not face criminal charges of Misdemeanor Bail Jumping for failing to follow the conditions of an arrest. For the reasons stated above, the circuit court should have granted the motion to dismiss filed on August 21, 2017.

III. The State did not Present Sufficient Evidence to show that Ms. Taylor was Charged with an Underlying Misdemeanor Crime prior to the Charge of Misdemeanor Bail Jumping Violation of Wis. Stat. § 946.49(1)(a).

A. Circuit Court Ruling.

Ms. Taylor, by her attorney, objected to a judgment in accordance with the verdict of guilty, based on insufficiency of the evidence. (R 42: 67). The circuit court granted judgment on the verdict, denying Ms. Taylor’s objection. (R 42: 68).

B. Standard of Review.

“[A]n appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state 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. Hayes*, 2004 WI 80, ¶ 56, 273 Wis. 2d 1, 25, 681 N.W.2d 203, 215 (citing *State v. Poellinger*, 153 Wis.2d 493, 507, 451 N.W.2d 752 (1990)).

C. Applicable Legal Standard.

The Due Process Clause of the Fourteenth Amendment places the burden of proving all elements of the offense

on the prosecution in criminal trials. See *Sullivan v. Louisiana*, 508 U.S. 275, 276, 113 S. Ct. 2078, 2080, 124 L. Ed. 2d 182 (1993). It also places upon the prosecution the burden of proving "beyond a reasonable doubt" every fact necessary to establish those elements. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). A criminal conviction must be reversed if no rational trier of fact could have found guilt beyond a reasonable doubt based on the trial record. See *Jackson v. Virginia*, 443 U.S. 307, 308, 99 S. Ct. 2781, 2783, 61 L. Ed. 2d 560 (1979). However, a reviewing court looks at the evidence in a light most favorable to the jury's verdict. *Poellinger*, 153 Wis. 2d 493, 507. A defendant challenging the sufficiency of the evidence bears a heavy burden to show the evidence could not reasonably have supported a finding of guilt. *State v. Hanson*, 2012 WI 4, ¶ 31, 338 Wis.2d 243, 808 N.W.2d 390.

D. Legal Argument

On July 12, 2017, the State charged Ms. Taylor with Misdemeanor Bail Jumping in violation of Wis. Stat. § 946.49(1)(a). (R 2). According to Wis. Stat. § 946.49(1), "Whoever, having been released from custody under ch. 969, intentionally fails to comply with the terms of his or her bond is: (a) If the offense with which the person is charged is a misdemeanor, guilty of a Class A misdemeanor." During the trial, the State presented evidence that Ms. Taylor was arrested and released on bond, but the State did not present any evidence that Ms. Taylor was charged with a misdemeanor. (R 42: 19-20).

In an unpublished decision, *State v. Castaneda*, 2013 WI App 115, 350 Wis. 2d 506, 838 N.W.2d 136, a defendant was charged with Felony Bail Jumping. The Court of Appeals determined that the "State was required to prove that [the defendant]: (1) was charged with a felony; (2) that he was released from custody on bond; and (3) that he intentionally failed to comply with the terms of the bond. *State v. Castaneda*, 2013 WI App 115, ¶ 16, 350 Wis. 2d 506, 838 N.W.2d 136. The State in that case failed to present any evidence that the defendant was charged with a felony. *Id.* Instead, the parties stipulated

to the fact that the defendant was charged with a “crime”. *Id.* Similar to this case, nowhere in the record is there any evidence to permit a jury to find that the defendant was charged with either a felony or a misdemeanor. *Id.* The nature of the underlying crime for which the defendant was in custody determines the penalty range for bail jumping. *Id.* at ¶ 18. The standard jury instructions define a misdemeanor as being “a crime punishable by imprisonment in the county jail”. *Id.* at ¶ 16. *Castaneda* only presented evidence that the defendant was charged with a crime, whereas in this case, the only evidence presented was that Ms. Taylor was arrested for a possible offense. (R 42: 19-20). Since the State failed to provide any evidence that Ms. Taylor was charged with a crime that determines the penalty range for bail jumping, Ms. Taylor cannot be convicted of misdemeanor or felony bail jumping. Therefore, the bail jumping conviction should be remanded with directions to enter a judgment of acquittal.

E. Summary.

Ms. Taylor, by her attorney, objected to a judgment in accordance with the verdict of guilty, based on insufficiency of the evidence. (R 42: 67). The State was required to prove that the defendant: (1) was charged with a crime; (2) that he was released from custody on bond; and (3) that he intentionally failed to comply with the terms of the bond. *Castaneda*, 2013 WI App 115, ¶ 16. The nature of the underlying crime for which the defendant was in custody determines the penalty range for bail jumping. *Id.* at ¶ 18. Since the State failed to provide any evidence that Ms. Taylor was charged with a crime, Ms. Taylor cannot be convicted of misdemeanor bail jumping. Therefore, the bail jumping conviction should be remanded with directions to enter a judgment of acquittal.

CONCLUSION

For the forgoing reasons, Ms. Taylor respectfully requests that this Court reverse the judgment of

conviction and the order denying the motion to dismiss and remand the case to the circuit court with directions to dismiss the charge of Misdemeanor Bail Jumping in violation of Wis. Stat. § 946.49(1)(a).

In the alternative, Ms. Taylor respectfully requests that this Court find there is insufficient evidence to support a criminal conviction of Misdemeanor Bail Jumping in violation of Wis. Stat. § 946.49(1)(a), reverse the circuit court's decision to grant judgment on the jury verdict and instruct the circuit court to grant judgement notwithstanding the jury verdict of guilty.

Dated: December 18, 2018

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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of the brief is 3,209 words.

Dated: December 18, 2018

Kristopher Ellis
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**CERTIFICATION OF COMPLIANCE WITH WIS.
STAT. § 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 Wis. Stat. § 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.

Dated: December 18, 2018

Kristopher Ellis
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