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WISCONSIN COURT OF APPEALS **05-10-2019**

DISTRICT III

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Case No. 2019AP81

COREY STAUNER

Defendant-Appellant.

Brief And Appendix Of Defendant-Appellant

Appeal from the circuit court for Marathon County,

Honorable Greg Huber, Judge of Marathon County, Order

dated December 7, 2015.

Larimore Law Office

Joel K. Larimore, Esq.

State Bar of WI #1065328

Attorneys for Defendant-Appellant

1561 Commerce Ct. #215

River Falls, WI 54022

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ISSUE PRESENTED

There is insufficient evidence to support the conviction for Mr. Stauner’s conviction for bailjumping dealing with committing a new crime.

POSITION ON ORAL ARGUMENT & PUBLICATION

Oral Argument is not requested. Publication is not recommended.

STATEMENT OF THE CASE

Corey Stauner (Appellant) was tried for three crimes in Marathon County on December 7, 2015. One count of Resisting an Officer and two counts of bailjumping. The basis' for the bailjumping were bonds he was subject to that required him to remain absolutely sober, and to not commit any new crimes. The jury acquitted defendant of Resisting an Officer but convicted him of both counts of bailjumping. Appellant made a motion to the circuit court requesting that the Bailjumping count be dismissed. That motion was denied.

STATEMENT OF FACTS

Appellant was driving on January 8, 2015, in Marathon County, Wisconsin. R97 at 56. The traffic stop was initiated due to the car driving at night without headlights. *Id.* Law enforcement asked Appellant whether he had been drinking, to which Appellant responded maybe he had a few drinks. *Id. at* 57. Officer Chittum testified that he could smell alcohol coming from Appellant. *Id.* Officer Chittum testified that Appellant became agitated when he was told he would be

arrested based on an arrest warrant. *Id* at 61. But, when asked whether Appellant was ever uncooperative, all Officer Chittum testified to was that at one point Appellant started walking away from the other officer, and was directed to face the squad car. *Id* at 62. Officer Chittum also testified that Appellant was tense and rigid. Defense played a video of the interaction during Officer Chittum's testimony. He again testified that Appellant was tense and rigid, describing them as precursors of someone who is going to "try to harm me or escape." *Id* at 80. Upon redirect, Officer Chittum testified Appellant's behavior as typical of "someone who is either going to fight or try to flee." *Id* at 93 Officer Carr testified that at one point he had to redirect Appellant to the front of the squad. *Id*. Officer Carr testified that the redirect was for Appellant's safety, not in response to him trying to break free or take off. *Id* at 97.

Officer Carr testified that Appellant told him that he could not have failed to appear, that the warrant had to have been wrong. *Id.* at 82.

It was established through Officer Sampson's testimony that at the time of the arrest defendant was under a bond from Dunn County that required that he not commit any new crimes, and that he not have alcohol or illegal drugs. *Id at 51*.

ARGUMENT

- I. There is insufficient evidence to support the conviction for Mr. Stauner's conviction for the Bailjumping count dealing with committing a new crime.

The standard of review on a claim that there was insufficient evidence to convict is whether "viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonable, could have found guilt beyond a reasonable doubt." *State v. Poellinger*, 153 Wis. 2d 493 (1990).

The State, in order to convict Appellant of the second Bailjumping, needed to prove that he committed a new crime. The only new crime alleged was Resisting an Officer.

In order for the State to convict someone of Resisting an Officer they have to show four elements

1. The defendant resisted an officer. To resist an officer means to oppose the officer by force or threat of force. The resistance must be directed to the officer personally.
2. The officer was doing an act in an official capacity. Officers act in official capacity when they perform duties that they are employed to perform.
3. The officer was acting with lawful authority. Officers act with lawful authority if their acts are conducted in accordance with the law.
4. The defendant knew that the officer was acting in an official capacity and with lawful authority, and the defendant knew that his conduct would resist the officer.

Wis. Ji _Criminal 1765.

Fortunately, nearly the whole interaction was caught on camera, and defense counsel went through with the

officers the different points of what was going on. For instance, the officers repeatedly described Appellant's body language. They referred to it as tense or rigid. They further testified that this body language is indicative of someone who is going to resist or flee. But, importantly, neither could point to an instance where defendant did either.

The testimony from the officers clearly shows that while there may have been reasons to be concerned that Appellant would resist, or would flee, that he in fact did neither. It goes without saying that Appellant can not be convicted for crimes that it appeared he might commit.

The officers do describe points where they have to redirect Appellant back to the front of the car. However, under cross examination Officer Carr testified that they simply had to redirect him to keep him safe due to traffic, not because he was trying to fight or break free. There is no reasonable interpretation of such an action as doing something with an intent, or direction to the officer

personally, the first element of Resistant an Officer. There was nothing that Appellant did to the officers that was directed towards them that could reasonable be considered resisting.

Additionally the State is required to prove that defendant knew that law enforcement was acting with lawful authority. *State v. Lossman*, 118 Wis.2d 526 (1984) Given what the officers testified what Appellant said, it is clear there was no evidence to establish that part of Appellant's state of mind. In fact, Appellant clearly believed law enforcement was acting without lawful authority. It is this subjective piece of Appellant's mind at the time of the alleged resisting that the State must prove beyond a reasonable doubt. In this case it clearly failed to do so. Hence, for this reason as well as those listed above the State failed to present sufficient evidence to support a conviction of Resisting an Officer (for which he was acquitted) or of the Bailjumping that was based on the alleged Resisting an Officer (for which he was convicted).

CONCLUSION

Appellant requests that the Court of Appeals find that there was insufficient evidence to support the conviction of the Bailjumping charge that is reliant on Appellant having committed a new crime, and remand the case to the circuit court for proceedings consistent with that ruling.

Dated at River Falls, Wisconsin this 7th day of May, 2019.

Respectfully Submitted,

Joel Larimore

1561 Commerce Ct. #215

River Falls, WI 54022

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Certification of Form and Length

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The text is 13 point type and the length of the brief is 42 pages (8,142 words).

Respectfully Submitted,

Joel Larimore

Attorney for Appellant-Defendant

1065328

1561 Commerce Ct. #215

River Falls, WI 54022

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Certification of Electronic Filing

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

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.

Respectfully Submitted,

Joel Larimore

Attorney for Appellant-Defendant

1065328

1561 Commerce Ct. #215

River Falls, WI 54022

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Certification as to Appendix

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral

or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Respectfully Submitted,

Joel Larimore

Attorney for Appellant-Defendant

1065328

1561 Commerce Ct. #215

River Falls, WI 54022