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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Appeal Case No. 2021AP000952-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,
vs.
THOMAS LOUIS GIEGLER,
Defendant-Appellant.

On Notice of Appeal from a Judgment of Conviction and
Order Denying Post-conviction Motion, Entered in the
Milwaukee County Circuit Court, the Honorable Jean Marie
Kies and the Honorable Rebecca A. Kiefer, Presiding

BRIEF OF PLAINTIFF-RESPONDENT

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¹ The State notes that Giegler's trial was presided over by the Honorable Judge Mary Kuhnmuensch, who entered the judgment of conviction after the jury's verdict. The Honorable Judge Kies only sentenced Giegler.

ISSUE PRESENTED

Did the State present sufficient evidence to prove beyond a reasonable doubt that Giegler knew that a Temporary Restraining Order had been issued against him?

The circuit court answered yes. The jury found Giegler guilty. The trial court, the Honorable Judge Kuhnmuensch, entered a judgement consistent with the verdict. The post-conviction court, the Honorable Judge Kiefer, answered yes and denied Giegler's post-conviction motion.²

This Court should answer yes.

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 August 3, 2017, Giegler was charged with knowingly violating a domestic abuse temporary restraining order (count one) and disorderly conduct (count two), each with the use of a dangerous weapon and habitual criminality penalty enhancer with H.F, Giegler's former live-in girlfriend, as the victim.³ (R. 1:1-3.)

On August 1, 2017, Giegler arrived, uninvited, and refused to leave. When West Allis police officers arrived, Giegler refused to get off a bed, had several items in his hands that he refused to drop, and continued to yell and be boisterous. H.F. was present for the conduct – both inside and outside the

² Hereinafter, the State will refer to the Honorable Judge Kuhnmuensch as the trial court and the Honorable Judge Kiefer as the circuit court.

³ The State uses a pseudonym in place of the victim's name in compliance with Wis. Stat. § (Rule) 809.86(4)(2019–20).

residence. H.F. also testified at trial as to the Temporary Restraining Order and Giegler's conduct of yelling at H.F. while outside the residence. H.F. had a valid and served Temporary Restraining Order against Giegler (R. 1:1-3.)

On October 17, 2018, Giegler appeared pro se for his jury trial. Prior to jury selection and on the State's motion, the court dismissed the weapons enhancer on counts one and two, which reduced the maximum penalty on each count to two (2) years. (R. 137:15-17.)

Giegler represented himself at trial, which began on October 17, 2018. (R. 137:3.) The State called three witnesses: A.K., Officer Kevyn Mussatti, and Officer Jesse Maxwell. The State introduced evidence that H.F. had a valid and served Temporary Restraining Order against Giegler. (R. 138:80.) Giegler did not call any witnesses and did not choose to testify. (R. 138: 107-111.)

On October 18, 2018, the jury found Giegler guilty of each count. (R. 139:32-33.)

On January 10, 2019, the trial court sentenced Giegler. The court found that Giegler was a habitual criminal repeater and sentenced him on each count to one (1) year of extended supervision, to be served consecutively to each other. (R. 140:28-32.)

Giegler then filed a motion for post-conviction relief. Giegler's motion requested the following relief: (1) vacating the habitual criminality enhancers; (2) entering an order of acquittal on the violating a restraining order charge; (3) ordering a new trial because he did not knowingly waive his right to counsel; and (4) dismiss the domestic abuse surcharge on the disorderly conduct charge. (R. 76:5, 11.)

The circuit court ordered an evidentiary hearing. The circuit court then found that Giegler did not knowingly waive his right to counsel and Giegler was granted a new trial on both counts. The convictions were also vacated. (R. 117:11.)

The circuit court denied Giegler's request to dismiss the count of knowingly violating a restraining order. (R. 117:11.)

Giegler now files an Appellant Brief asserting that the State did not present sufficient evidence at trial to convict him of knowingly violating a temporary restraining order.

STANDARD OF REVIEW

An appellate court cannot reverse a criminal conviction “unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. DeRango*, 229 Wis. 2d 1, 30, 599 N.W.2d 27 (Ct. App. 1999), quoting *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). If there is any possibility that the factfinder could have drawn the appropriate inferences from the trial evidence to find guilt, this court may not overturn a verdict even if it believes the defendant should not have been convicted on the evidence presented. *Id.*

ARGUMENT

I. There are sufficient facts to support the Jury’s verdict of Giegler knowingly violating the temporary restraining order.

A. Legal Principles – Case Law

For a criminal conviction to satisfy due process, the State must prove each essential element of a charged crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 324 (1979); *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). On review of a “sufficiency” challenge, the “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.” *Poellinger*, 153 Wis. 2d at 507. Furthermore, “[i]f any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt” *Id.*

Although the trier of fact must be convinced that the evidence is sufficiently strong to exclude every reasonable hypothesis of the defendant's innocence, this is not the test on appeal. *Poellinger*, 153 Wis. 2d at 503. "[A]n appellate court need not concern itself in any way with evidence which might support other theories of the crime. An appellate court need only decide whether the theory of guilt accepted by the trier of fact is supported by sufficient evidence to sustain the verdict rendered." *Id.* at 507–08. At trial, the fact finder may draw reasonable inferences from the evidence presented. Unlike historical facts, inferred facts cannot be observed but rather are believed to be "event[s] or condition[s] which exist as a consequence of other established facts." *State v. Dunn*, 117 Wis. 2d 487, 493, 345 N.W.2d 69 (Ct. App. 1984) (Gartzke, P.J., dissenting).

B. The evidence presented at trial gave the jury a lawful basis on which to convict Giegler of the violation of the Temporary Restraining Order

The State called three witnesses at trial. The State first called Mr. Anthony Konz. (R. 138:15.) He testified that he was H.F.'s neighbor back in July of 2017. (R. 138:16.) He knew about H.F.'s restraining order against Giegler because H.F. gave him and his wife a copy. (R. 138:16-17.) H.F. gave it to him so he would know what was going on and to keep an eye out. (R. 138:17.) He called the police in the morning on July 29, 2017 because Giegler had come to his residence. (R. 138:17.) He testified that he didn't completely read the restraining order, but he was aware that it was there, that H.F. was afraid of the defendant, and that the defendant was not supposed to be there, as there was a no contact clause. (R. 138:30-32.)

Officer Mussatti then testified about the incident the evening of July 29, 2017, and that the TRO restricted Giegler from being at a location occupied by H.F. (R. 138:40-45.) Additionally, the State submitted the TRO as an exhibit without objection by Giegler. (R. 138:43-44; R. 22.)

The relevant testimony of Officer Mussatti on October 18, 2017, at the jury trial is as follows:

OFFICER: Apparently Mr. Giegler was at the residence against temporary restraining order and the petitioner which is the person that made the temporary restraining order, [H.F.], was also at the residence.

STATE: Okay. And did you prior to arriving confirm that there was, in fact, a restraining order in place?

OFFICER: A I did, yes.

STATE: And did you also confirm that that's a restraining order that had been served?

OFFICER: Yes.

STATE: So you arrived at the residence, you were let in other officers and told that Mr. Giegler is in a back bedroom. Was that correct?

OFFICER: Correct.

STATE: Okay. And what were your next observations?

OFFICER: We went to the back bedroom, and once we made contact with Mr. Giegler, he was standing directly on top of the bed screaming at us.

STATE: Okay. And did you give Mr. Giegler any orders to -- at all?

STATE: I did. I specifically told him because I saw something in his hand, I couldn't see exactly what it was. I told him to drop the iron from his hand.

STATE: And did he?

OFFICER: He did not.

STATE: Okay. Did you give any other orders?

OFFICER: He was ordered -- I don't remember if it was me specifically or another officer that said to get off the bed.

STATE: Okay. And did he comply with that request?

OFFICER: No.

STATE: Did you make efforts to get Mr. Giegler outside of the residence?

OFFICER: Yes, we -- we had to arrest him.

STATE :Okay. And was he cooperative in that process?

OFFICER: Not during the arrest.

STATE: Okay. What was the -- What was his demeanor throughout that process.

OFFICER: He was screaming, he was loud, he was angry, very excited for most of it.

STATE: I would ask permission to move Exhibit No. 1 into evidence.

THE COURT: Any objection?

MR. GIEGLER: No objections.

THE COURT: The Court will receive Exhibit 1 into the trial record.

STATE: Officer, I'm going to direct your attention to the second correct?

OFFICER: Yes.

STATE: And those are marked with check boxes; is that correct?

OFFICER: Correct.

STATE: I'm going to ask you at this time to read in their entirety exactly what that temporary restraining order prohibited page of Exhibit No. 1 and on that second page of Exhibit No. 1 there are specifically three provisions on that exhibit that state the orders of that Retraining Order

OFFICER: The first one is the respondent refrain from committing acts or threats of domestic abuse against the petitioner. The second one is the respondent avoid the petitioner's residence and/or any location temporarily occupied by the petitioner and the third one is the respondent avoid contacting the petitioner or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner unless the petitioner consents in writing (emphasis added). Contact includes contact at petitioner's home, work, school, public places, in person, by phone, in writing, by electronic communication or a device on or in any other manner.

(R. 138:40-45)

Here, the State demonstrated that H.F. had a valid and served Temporary Restraining Order against Giegler. The evidence further demonstrates that there is no reason to overturn the jury's verdict based upon the overwhelming evidence produced at trial.

The question at this stage is not whether this court would have found Giegler guilty, but whether the evidence "is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *Poellinger*, 153 Wis. 2d at 507. The evidence presented in this case meets the *Poellinger* standard.

Similarly, here, the testimony by West Allis Police Officer Jesse Maxwell was sufficient for the jury to arrive at its guilty verdict. Officer Maxwell both testified that there was, in fact, a valid Temporary Restraining Order that listed Giegler as the respondent and the victim as the petitioner

The relevant testimony of Officer Maxwell on October 18, 2017, at the jury trial is as follows:

COURT: When you do serve documents upon an individual, what's the process by which -- if there is one, that you use to execute the service?

OFFICER: In the past when I've done it, I make contact with the individual, I identify who they are, provide them with whatever the document is. In our case it's usually a restraining order and then we have our dispatch contact the Milwaukee County Sheriff's Department and advise them that they were served.

[...]

DEFENSE: So there's no documentation that an individual was served -- besides just your word that you served them; is that correct?

OFFICER: In the cases I've done it, yes

(R. 138:79-80.)

Upon inquiry of the Court of the process of service:

OFFICER: As far as I'm aware no one in the West Allis Police Department gets a signature when they present someone with a document [...]

COURT: And why is that sir?

OFFICER: Because we physically see them and its -- were sworn officers and we served that person

COURT: and you do that through an affidavit, sire

OFFICER: Yes

(R. 138:80.)

Additionally, the State inquired of Police Officer Maxwell the protocol for responding to a call involving a violation of a Restraining Order:

STATE: In your department, sir, when you go to a restraining call, what is the protocol?

OFFICER: if we have enough information for the individuals involved, we ask dispatch to run them and when that NCIC reaches the system, they run the name through, will indicate whether or not there's a protection order in place and then that also indicates whether or not that has been served, and that's the information we initially start with and go from take our investigation from there once we make contact.

STATE: So, when this was dispatched and you entered -- when you were under the intention (sic) that there was a restraining order served, but do you know what the contents of that restraining order exist -- consisted of, sir?

OFFICER: At the point that I responded the only information I had from dispatch was that there was a protection order in place and that you had been served.

(R. 138:84-85.)

On re-direct, the State clarified that the officers responding in this case had confirmed that the Temporary Restraining Order had been served. (R. 138:89).

To prove the crime of Knowingly Violating a Domestic Abuse Temporary Restraining Order, the State had to prove three elements beyond a reasonable doubt:

- 1) A temporary restraining order was issued against Giegler in favor of H.F.
- 2) Giegler committed an act that violated the terms of the temporary restraining order, and
- 3) Giegler knew that the temporary restraining order had been issued and knew that his acts violated its terms.

(R. 24:1; R. 139:13-14.); *see also* WIS-JI-Criminal 2040.

Giegler challenges only the third element, that the State produced sufficient evidence for a reasonable jury to conclude that he knew about the temporary restraining order. (Appellant's Brief, p. 8.)

The State introduced sufficient evidence for a reasonable jury to find that Giegler knew of the restraining order. Both Officer Mussatti and Officer Maxwell testified that they both knew that the order had been served because they checked with dispatch before making contact. (R. 138:40, 89). Officer Maxwell testified to the process used in West Allis for serving a restraining order and how a record of that is created; an officer physically gives the document to the intended person and a record is made with the Milwaukee County Sheriff's Office. (R. 138:79-80.) Additionally, H.F. let her neighbor know about the order and even gave him a copy. (R. 138: 17.)

All of the evidence, taken together, circumstantially shows that Giegler knew of the Temporary Restraining Order. The officers confirmed that it was served before making contact and H.F. went so far as to tell neighbors about it. The Court should therefore find there was sufficient evidence to support Giegler's conviction for Knowingly Violating a Domestic Abuse Temporary Restraining Order.

CONCLUSION

In conclusion, this Court should affirm that there was sufficient evidence to support the verdict.

Dated this 7th day of October, 2021.

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 3123.

Electronically signed by:

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 6th day of October, 2021.

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