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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2021AP000952

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THOMAS LOUIS GIEGLER,

Defendant-Appellant.

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

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REPLY BRIEF OF  
DEFENDANT-APPELLANT

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## ARGUMENT

### **I. The State did not meet its burden to show Mr. Giegler knowingly violated a temporary restraining order because it did not prove he knew about the order.**

This appeal asks this Court to settle a straightforward question: was testimony from two officers that a temporary restraining order issued against Mr. Giegler had been “served” sufficient evidence to prove beyond a reasonable doubt that Mr. Giegler knew about the temporary restraining order? Mr. Giegler asserts that it was not.

Officer Kevin Mussatti and Officer Jesse Maxwell testified at trial in this matter that they confirmed that a temporary restraining order against Mr. Giegler had been “served.” (138:40-41; 183:89). Specifically, Officer Maxwell testified police dispatch informed him that the temporary restraining order issued against Mr. Giegler had been “served.” (138:89). However, the officers provided no testimony regarding the actual circumstances surrounding the service of the temporary restraining order on Mr. Giegler, such as when, where, and how it was served.

Furthermore, the officers did not testify whether police directly gave Mr. Giegler a copy of the temporary restraining order when it was “served.” Notably, Wis. Stat. §801.11(1)(b) allows for the service of a document on a person by leaving a copy of the

document at the person's "place of abode" with a family member or adult who lives at the residence if, after reasonable diligence, the person could not be served directly. Although, Officer Maxwell testified about how he had served documents such as restraining orders in the past—by providing the subject of the document with a copy—he did not and could not testify to that happening here because he was not involved in serving Mr. Giegler with the restraining order. (138:79-80).

Additionally, Officer Maxwell admitted that when an officer serves a restraining order on a person, they complete an affidavit to show the restraining order was indeed served. (138:80). But the State did not admit an affidavit of service into evidence at trial in this case.

As further support for its claim that sufficient evidence was presented in this matter to show that Mr. Giegler knew about the temporary restraining order—beyond the officers' testimony that they confirmed that the temporary restraining order was served—the State points out that H.F. let her neighbor know about the temporary restraining order and gave the neighbor a copy of it after it was issued. (State's Br. at 10). This evidence only demonstrated that H.F. and her neighbor knew about the restraining order, not that Mr. Giegler did.<sup>1</sup>

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<sup>1</sup> The State writes in its response brief that "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."

Continued

In this case, the State did not present sufficient evidence to show that the restraining order against Mr. Giegler was even served on him, as the only evidence the State presented was second-hand testimony from two officers who were not involved in its service. Further, service of a temporary restraining order does not equate to proof of a person's knowledge of that order, especially in a case like this one where the State failed to present any evidence regarding the circumstances surrounding the service of the order.

At best, the evidence presented at trial here allowed the jury to speculate that Mr. Giegler knew about the restraining order. To sustain a verdict, there must be sufficient credible evidence to support guilt *beyond a reasonable doubt*. *State v. Poellinger*, 153 Wis. 2d 493,501, 451 N.W.2d 752 (1990). That evidence is lacking here.

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H.F. did not testify at trial, as she died before the trial started. (State's Br. at 3; 137:15-17).

## CONCLUSION

For the reasons stated in this brief and Mr. Giegler's brief-in-chief, Mr. Giegler respectfully requests that this Court remand this case with instructions that the circuit court enter an order of acquittal on the charge of violating a temporary restraining order.

Dated this 8th day of October, 2021.

Respectfully submitted,

*Electronically signed by*

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**CERTIFICATION AS TO FORM/LENGTH**

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. the length of this brief is 649 words.

Dated this 8th day of October, 2021.

Signed:

*Electronically signed by*

*Christopher D. Sobic*

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