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C O U R T O F A P P E A L S

DISTRICT III

Case Nos. 2022AP658-CR, 2022AP659-CR, 2022AP661-CR, 2022AP662-CR, 2022AP663-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

AARON L. JACOBS,

Defendant-Appellant.

ON APPEAL FROM A NON-FINAL ORDER ENTERED IN THE SHAWANO COUNTY CIRCUIT COURT, THE HONORABLE KATHERINE SLOMA, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

Aaron L. Jacobs was charged with felonies in Outagamie County and Forest County and released on bond after cash bail was posted in both cases. Bond conditions in each case included appearing at required court hearings and not committing crimes. When Jacobs failed to appear at required court hearings in both Outagamie County and Forest County, circuit courts in each county issued warrants instructing that Jacobs be "held for an appearance in court." Jacobs was arrested on the warrants and taken to the Shawano County jail. Jacobs was later charged in five cases with numerous crimes in Shawano County for his actions while in the Shawano County jail. In each of the five cases, he was charged with felony bail jumping for violating his bond conditions in both Outagamie County and Forest County.

Jacobs moved to dismiss all of the felony bail jumping charges on the ground that once he was arrested and taken into custody in Shawano County, he was no longer "released from custody" on bond, and therefore could not be subject bail jumping charges. The circuit court rejected Jacobs's argument, concluding that the conditions of bond remined intact after Jacob's arrest.

On appeal, Jacobs argues that his release from custody ended when he was arrested. Since the circuit court correctly rejected that argument, this Court should affirm the circuit court's decision denying Jacobs's motion to suppress evidence.

ISSUE PRESENTED

Can the State properly charge Jacobs with bail jumping for violating terms of his release from custody on bond by committing crimes while in jail, after he was arrested on warrants for failure to appear?

The circuit court answered "yes," and denied Jacobs's motions to dismiss the bail jumping charges.

This Court should answer "yes" and affirm.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication, as this case can be decided by application of well-established principles to the facts presented. Further, this appeal stems from a petition for leave to appeal, and the record is therefore limited, which weighs against publication.

STATEMENT OF THE CASE AND FACTS

A. Jacobs violated conditions of his release on bail in Forest County and Outagamie County.[1]

Jacobs was charged with eight crimes, including one felony, in Forest County on May 6, 2019. (A-App. 16.) He was charged with six crimes, including three felonies, in Outagamie County on October 29, 2019. (A-App. 3.) Jacobs was released on bond in both cases when he posted cash bail. (A-App. 14, 36–37.) Conditions of his release included that he appear for all required court hearings and that he not commit

[1] Records and official documents from Jacobs's Forest County and Outagamie County cases are not included in the appellate record. The Shawano County circuit court relied on CCAP entries from the two cases for background. The State believes that the CCAP entries are adequate for that purpose. The State will address Jacobs's reliance on CCAP entries as supporting his motions to dismiss bail jumping charges later in this brief.

any crimes.[2] Jacobs had scheduled court hearings in Forest County on February 4, 2020, and in Outagamie County on February 5, 2020. (A-App. 12, 34.) He failed to appear at either hearing. (A-App. 12, 34.)

On February 4, 2020, the Forest County circuit court issued a body only warrant and ordered that Jacobs's cash bail was forfeited. (A-App. 34.) On February 7, 2020, the Outagamie County circuit court issued a bench warrant for Jacobs. (A-App. 12.) On March 16, 2020, Jacobs was arrested in Shawano County on the two warrants. (R. 66:31, 36–38.)[3]

On June 3, 2020, Jacobs appeared in his Outagamie County case. (A-App. 11.) The circuit court canceled the bench warrant and ordered Jacobs's cash bail returned to the poster. (A-App. 11.) On September 21, 2020, Jacobs appeared in his Forest County case. (A-App. 31–32.) The circuit court canceled the warrant and set a new cash bail. (A-App. 32.) Jacobs entered a plea in his Outagamie County case on September 24, 2020, and was sentenced on April 12, 2021. (A-App. 7, 9.) On August 31, 2021, Jacobs's cash bail in his Forest County was converted to a signature bond. (A-App. 25.)

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[2] The bond forms are not included in the appellate record, so it is not entirely clear what conditions were imposed. But when a person is released on bond with a cash bail, the conditions "shall include, without limitation, the requirements that the defendant will appear in the court having jurisdiction on a day certain and thereafter as ordered until discharged on final order of the court and that the defendant will submit to the orders and process of the court." Wis. Stat. § 969.09. And when a person charged with a felony is released on bond, "As a condition of release in all cases, a person released under this section shall not commit any crime." Wis. Stat. § 969.03(2).

[3] In this brief, citations to the appellate record are to the record in case number 2022AP659-CR (2021CF278) unless otherwise specified.

B. Jacobs was charged with 20 counts of felony bail jumping in his five Shawano County cases.

Jacobs was charged in five cases in Shawano County for his actions while he was in jail in Shawano County. On June 16, 2020, the State charged Jacobs in Shawano County Case Number 2020CF286 with disorderly conduct by a prisoner, battery by a prisoner, and throwing or discharging bodily fluids at a public safety worker on June 10, 2020. (R. 22AP658: 2:1–2; 15:1–2.) The State also charged Jacobs with two counts of felony bail jumping for violating his bond in his Forest County and Outagamie County cases by committing the crimes in Shawano County. (R. 22AP658: 2:2–3; 15:2–3.)

On July 8, 2021, the State charged Jacobs in three cases. In Shawano County Case Number 2021CF278, the State charged Jacobs with obstructing an officer for filing a false complaint against a law enforcement officer on April 26, 2020. (R. 2:1; 18:1.) The State also charged Jacobs with two counts of felony bail jumping for violating conditions of his bond in his Forest County and Outagamie County cases by committing the crimes in Shawano County. (R. 2:1; 14:1.) In addition, the State charged Jacobs with two counts of misdemeanor bail jumping for violating conditions of his bond in two Oconto County cases. (R. 22AP661: 2:2–3; 14:2–3) Those misdemeanor charges are not subject to this appeal.

In Shawano County Case Number 2021CF279, the State charged Jacobs with lewd and lascivious behavior and disorderly conduct on November 11, 2020. (R. 22AP661: 2:1–2; 14:1–2.) The State also charged Jacobs with four counts of felony bail jumping for violating his bond in his Forest County and Outagamie County cases. (R. 22AP661: 2:3–5; 14:2–4.) In addition, the State charged Jacobs with two counts of misdemeanor bail jumping for violating conditions of his bond

in his two Oconto County cases. (R. 22AP661: 2:2–3; 14:2.) Those misdemeanor charges are not subject to this appeal.

In Shawano County Case Number 2021CF280, the State charged Jacobs with two counts of battery to a law enforcement officer, and one count each of resisting arrest and disorderly conduct on December 18, 2020. (R. 22AP662: 2:1–2; 16:1–2.) The State also charged Jacobs with eight counts of felony bail jumping for violating his bond in his Forest County and Outagamie County cases. (R. 22AP662: 2:2–6; 16:2–6.) The State also charged Jacobs with four counts of misdemeanor bail jumping for violating his bond in his two Oconto County cases, by committing the crimes in Shawano County. (R. 22AP662: 2:6–7; 16:6–7.) Those misdemeanor charges are not subject to this appeal.

On August 24, 2021, the State charged Jacobs in Shawano County Case Number 2021CF351, for lewd and lascivious behavior and disorderly conduct on August 12, 2021. (R. 22AP663: 2:1; 39:1–2.) The State also charged Jacobs with two counts of felony bail jumping for violating his bond in his Forest County case by committing the crimes in Shawano County. (R. 22AP663: 2:2; 39:1–2.)

C. The circuit court denied Jacobs's motions to dismiss his bail jumping charges.

In total, the State charged Jacobs with 20 counts of felony bail jumping for violating his bond in his Forest County and Outagamie County cases. Jacobs moved to dismiss all of those charges. In four of his cases, Shawano County Case Numbers 21CF278, 21CF279, and 21CF280, and 20CF286, Jacobs moved to dismiss all of the bail jumping charges pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978) and *State v. Mann*, 123 Wis. 2d 375, 367 N.W.2d 209 (1985). (R. 11; 22AP661: 9; 22AP662: 9; 22AP286: 94.) Jacobs asserted that the criminal complaints in each case lacked probable cause for the bail jumping charges because they

alleged that he had been released on bond in his Forest and Outagamie, County cases, but failed to state that he had been arrested in Shawano County on warrants in each of those cases. (R. 11:3–4; 22AP661: 9:3–4; 22AP662: 9: 3–4.)[4] Jacobs asserted that "Had the State informed the Court that Mr. Jacobs had pending warrants in each of these cases at the time of his arrest on March 16, 2020, the Court likely would not find probable cause in these cases." (R. 11:4; 22AP661: 9:4; 22AP662: 9: 4.)

In Shawano County Case Number 2020CF286, Jacobs moved to dismiss for lack of probable cause, asserting that on the date of the charged offense—June 10, 2020—he was being held on a body only warrant in his Forest County Case. (R. 22AP658: 94:1.) Jacobs also asserted that in his Outagamie County case, his cash bail had been returned to the poster, and a new cash bail had been set. (R. 22AP658: 94:1.) Jacobs asserted that "[f]ailing to include this information has a direct effect on the Court's finding that probable cause existed on the felony bail jumping counts in this case." (R. 22AP658: 94:2.)

In Shawano County Case Number 2021CF351, Jacobs moved to dismiss on two grounds. He asserted that the facts in the criminal complaint were insufficient to constitute lewd and lascivious behavior or disorderly conduct, so those charges should be dismissed. (R. 22AP663: 48.) And he asserted that the felony bail jumping charges should be dismissed because he was not released on bond in his Forest County case at the time of his alleged lewd and lascivious behavior or disorderly conduct, so he was not properly charged with bail jumping. (R. 22AP663: 30:6–7.)

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[4] Jacobs also challenged his misdemeanor bail jumping charges relating to his release on bond in his Oconto County cases. He does not pursue his challenge to those misdemeanor charges in this appeal.

The circuit court first addressed Jacobs's motions to dismiss the felony bail jumping charges at a preliminary hearing for all of Jacobs's Shawano County cases, and at two subsequent hearings. At the preliminary hearing, Jacobs argued that once he was taken onto custody on his Outagamie County and Forest County warrants, he "wasn't released into the community any longer on those cases," so "I don't think that the felony bail jumping applied." (R. 66:39.)[5]

The prosecutor argued that the State only had to prove that Jacobs had been charged with a felony, had been released on conditions, and that he violated those conditions. (R. 66:38.) The prosecutor asserted that whether Jacobs's cash bond had been forfeited or returned to the poster "was not part of the elements." (R. 66:38.)

The court agreed with the prosecutor. The court said "He had bond conditions. If he failed to show up for court, it's not like every condition of bond just evaporates." (R. 66:04.) The court explained that in Jacobs's Forest County case, "There's a dollar amount set for him to get back out. In this case it was $10,000. All of his other conditions remained. He just didn't come up with the $10,000." (R. 66:40.) The court added, "My analysis is that he was on bond. He was out. He didn't show up. The court upped the cash amount, but none of the other conditions went away." (R. 66:41.) The court therefore bound Jacobs over for trial in each. (R. 66:47.)

At the hearing on Jacobs's *Franks-Mann* motions (R. 103), Jacobs argued that when it charged him, the State "had information within its possession, namely whether Mr. Jacobs was actually on bond." (R. 103:17–18.) Jacobs asserted that the court should dismiss the bail jumping charges in "cases where he was in custody, had previously been released

[5] Since the three hearings relate to all five of Jacobs's cases, the State will cite only to the appellate record in case number 22AP659.

on bond, but that bond had either been revoked, it had been returned to the poster, or an additional cash bond was set." (R. 103:18.) The prosecutor asserted that to prove a person guilty of bail jumping, the State only has to prove that the defendant was charged with a felony, he was released from custody on bond, and he intentionally failed to comply with terms of the bond. (R. 103:19–20.) The prosecutor argued that when a person released on bond violates a condition and the court revokes the cash bail, the court does not automatically revoke the conditions of bond. Instead, "the conditions of bond remain in place." (R. 103:19–20.)

The court denied Jacobs's motions. It concluded that whether Jacobs had been released from custody on bond is a factual issue for a jury to decide. (R. 103:22.) The court said that Jacobs being in warrant status and in jail did not mean that he was not subject to his bond conditions and to potential bail jumping charges. The court explained that "there are plenty of times where the Court authorizes warrants" after a defendant released on bond fails to appear. (R. 103:22.) The court said "I do not completely revoke all the terms of bond. We authorize warrants to get the person back into court. But it's not like the warrant is authorized and in that moment all conditions of bond evaporate." (R. 103:22.)

Jacobs moved for reconsideration, relying on *State v. Orlik*, 226 Wis. 2d 527, 595 N.W.2d 468 (Ct. App. 1999), and *State v. Dewitt*, 2008 WI App 134, 313 Wis. 2d 794, 758 N.W.2d 201. (R. 81.) At the hearing in his motion, Jacobs argued that under those cases, once he was brought into custody, the court lacked the power to impose conditions of release. (R. 82:15–17.)

The circuit court concluded that *Dewitt* and *Orlik* do not apply to Jacobs's cases because Jacobs had been released on bond in his Forest County and Outagamie County cases. (R. 82:30.) The court said, "I don't believe that warrant status changes the custody situation" in his Forest County and

Outagamie County cases. (R. 82:31.) And the court concluded that a forfeiture of bond "doesn't negate all of the other terms of bond." (R. 82:32.) The court issued written orders denying Jacob's motions. (R. 82:32.) This Court then granted Jacobs's petition for leave to appeal the circuit court's non-final orders. (R. 99.)

STANDARD OF REVIEW

The issue is this case is whether the circuit court properly denied Jacobs's motions to dismiss his bail jumping charges and motion for reconsideration. Resolution of this issue requires interpretation of the bail jumping statute and statutes involving release from custody on bond, and application of the statute to the facts of this case. This is a question of law reviewed de novo. *State v. Reitter*, 227 Wis. 2d 213, 223, 595 N.W.2d 646 (1999).

ARGUMENT

The circuit court properly denied Jacobs's motions to dismiss the bail jumping charges in his five cases, as well as Jacobs's motion for reconsideration.

A. Introduction.

In the circuit court, Jacobs moved to dismiss his felony bail jumping charges. The circuit court denied his motions. On appeal, Jacobs makes a single argument—that he was no longer released from custody on bond after he was arrested on March 16, 2020, and therefore he could not properly be charged with bail jumping for committing crimes after March 16, 2020, while he was in jail. (Jacobs's Br. 30.) However, it is well-established that a defendant can be subject to bond conditions while in jail. And Jacobs has not shown that his bond conditions in either his Outagamie County or Forest County case were revoked upon his arrest on the warrants in

those cases. He therefore has not shown that he could not properly be charged with bail jumping for violating his conditions of release.

B. Under the plain language of Wis. Stat. § 946.49, a person is guilty of bail jumping if he was charged with a crime, was released from custody on bond, and intentionally failed to comply with a condition of bond.

The issue in this case requires the interpretation of Wis. Stat. § 946.49. "The purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *State v. Buchanan*, 2013 WI 31, ¶ 23, 346 Wis. 2d 735, 828 N.W.2d 847 (quoting *State v. Ziegler*, 2012 WI 73, ¶ 42, 342 Wis. 2d 256, 816 N.W.2d 238) (additional citations omitted).

When a reviewing court interprets a statute, it "begins with the plain language of the statute." *State v. Dinkins*, 2012 WI 24, ¶ 29, 339 Wis. 2d 78, 810 N.W.2d 787 (citing *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110). A court "generally give[s] words and phrases their common, ordinary, and accepted meaning." *Id.* (citing *Kalal*, 271 Wis. 2d 633, ¶ 45). A reviewing court is to "interpret statutory language reasonably, 'to avoid absurd or unreasonable results.'" *Id.* (quoting *Kalal*, 271 Wis. 2d 633, ¶ 46). "An interpretation that contravenes the manifest purpose of the statute is unreasonable." *Id.* (citing *Kalal*, 271 Wis. 2d 633, ¶ 49). "[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Kalal*, 271 Wis. 2d 633, ¶ 46. In determining the plain language meaning of a statute, a court may consider the scope, context, and purpose of the statute, so long as they "are ascertainable from the text and structure of the statute itself." *Id.* ¶ 48.

Jacobs was charged with felony bail jumping in violation of Wis. Stat. § 946.49, which provides that "Whoever, having been released from custody under ch. 969, intentionally fails to comply with the terms of his or her bond is" guilty of a felony if the charged offense is a felony. Wis. Stat. § 946.49(1)(b). As the jury instruction for bail jumping states, the crime "is committed by one who has been released from custody on bond and intentionally fails to comply with the terms of that bond." Wis. JI—Criminal 1795 (2018). The instruction sets forth the three elements of the crime applicable here:

> 1. The defendant was charged with a felony.
>
> 2. The defendant was released from custody on bond.
>
> 3. The defendant intentionally failed to comply with the terms of the bond.

Wis. JI—Criminal 1795.

On appeal, Jacobs does not dispute that he (1) was charged with a felony in the Outagamie and Forest County cases; (2) was initially released from custody on bond in those cases; and (3) intentionally failed to comply with the terms of his bond. But he argues that to prove him guilty of felony bail jumping, the State must prove that he was released from custody on bond *and remained out of any type of custody at the time* that he intentionally failed to comply with the terms of his bond. (Jacobs's Br. 27.)

However, by its plain language, Wis. Stat. § 946.49 is not limited to intentional violations of bond conditions while the person remains out of any type of custody, such as jail. It applies to a person "having been released from custody under ch. 969." Wis. Stat. § 946.49. If the legislature had intended to limit bail jumping to a violation of bond while a person remained out of any type of physical custody, it could have said exactly that.

The jury instruction for bail jumping does not support Jacobs's reading of the statute. The second element in the jury instruction is that the defendant "was released from custody on bond." Wis. JI—Criminal 1795 (2018). And the instruction explains that the second element "requires that after being charged, the defendant was released from custody on bond under conditions established by a judge." *Id.* The third element "requires that the defendant had the mental purpose to fail to comply with the terms of the bond," and "that the defendant knew of the terms of the bond and knew that his actions did not comply with those terms." *Id.* Nothing in the jury instruction supports Jacobs's argument that bail jumping can only be committed by a person who had been released from custody on bond and remained out of any type of custody at the time he intentionally violated a term of his bond. Instead, as the statute plainly says, the statute applies to a person "having been released from custody on bond" without reference to his remaining out of physical custody.

C. A person can be "released from custody on bond" and therefore subject to a bail jumping charge even if he is jail.

Jacobs argues that he was not properly charged with bail jumping for violating his bond in his Outagamie County and Forest County case by committing crimes because he committed those crimes while he was in jail in Shawano County. Jacobs claims that "Bail jumping is a charge that requires a defendant, at the time of the alleged intentional violation of the terms of bond, to be "released from custody" on the bond at issue." (Jacobs's Br. 20.) He argues that once he was arrested on March 16, 2020, he was no longer "released from custody" and therefore not subject to his bond conditions. Jacobs relies on two cases, *Orlik*, 226 Wis. 2d 527 and *Dewitt*, 313 Wis. 2d 794.

The circuit court rejected Jacobs's argument after a hearing on Jacobs's motion for reconsideration. (R. 84; 103:21–22.) It concluded that *Orlik* is inapplicable because unlike in *Orlik* where the defendant was never released from custody on bond, here, Jacobs was released on bond. (R. 82:30–31.)[6]

The circuit court was correct. In *Orlik*, the court ordered a $320,000 cash bond as a condition of release. *Orlik*, 226 Wis. 2d at 530. It also imposed, as a condition of release, that the defendant have no contact with his wife and daughter. *Id.* The defendant did not post the cash bond and was not released from custody. *Id.* The circuit court concluded that no-contact condition applied even though the defendant was never released. *Id.* at 532.

The issue on appeal was whether Wis. Stat. § 969.01 "Eligibility for Release" and Wis. Stat. § 969.03 "Release of Defendants" authorize a circuit court to impose conditions on pretrial incarceration. *Orlik*, 226 Wis. 2d at 536. This Court determined that those statutes only authorize a circuit court to impose conditions "that govern the release of the defendant from custody." *Id.* at 538. Since the defendant was never released, the condition never took effect. *Id.* at 541. This Court therefore held that "the plain language of §§ 969.01 and 969.03, STATS., does not authorize the court to impose

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[6] Jacobs argues that the circuit court may have misunderstood that he was arrested on the Outagamie County and Forest County warrants when it said that "Mr. Jacobs was out of custody. He was not physically in the custody of the jail or prison or any sort of entity." (Jacobs's Br. 32; R. 82:31.) But the court was seemingly distinguishing the facts of this case from those of *Orlik*. The court noted that in *Orlik*, the defendant "was never truly released from custody." (R. 82:31.) But here, the court recognized, Jacobs had been released from custody.

conditions on a defendant who remains incarcerated pending trial." *Id.* at 540.

Orlik does not govern this case because the situation here is materially different than the one in *Orlik*. Here, the circuit courts in Outagamie County and Forest County imposed conditions of Jacobs's release, and Jacobs was released from custody in both cases pursuant to Wis. Stat. § 969.01(1). The conditions of release, including the ones prohibiting him from committing a crime, therefore took effect because he was "released from custody under ch. 969." Wis. Stat. § 946.49(1).

Dewitt similarly does not support Jacobs's argument. It instead demonstrates that a person can properly be charged with bail jumping bail for violating a condition of release while in jail. In *Dewitt*, the defendant was charged with crimes in two felony cases and one misdemeanor case. *Dewitt*, 313 Wis. 2d 794, ¶ 2. The circuit court imposed cash bond in the two felony cases and a signature bond in a misdemeanor case. *Id.* ¶ 3. The court ordered no contact with the victim as a condition of two of the bonds, including the signature bond. *Id.* The defendant signed the signature bond but did not post the cash bonds. *Id.* The defendant remained in jail, and while there, having not been physically released from custody, he called the victim nine times. *Id.* ¶¶ 3, 4. The State charged him with nine counts of misdemeanor bail jumping for violating the terms of release in his misdemeanor case. *Id.* ¶ 4. The defendant pleaded no contest to some of the charges, including three counts of misdemeanor bail jumping. *Id.* ¶ 5. He moved for postconviction relief, seeking to withdraw his pleas on the ground that "the bail jumping convictions were invalid because he was still a prisoner in jail when he violated the no contact order." *Id.* ¶ 7. The circuit court denied the defendant's motion. *Id.*

On appeal, the defendant claimed that since he was not physically released, he was still in custody and therefore could not properly be charged with bail jumping under. *Id.* ¶ 8. This Court rejected the defendant's argument. This Court concluded that "release" under Wis. Stat. §§ 946.49 and 969.02 is not limited to physical release. Instead, "'release' refers to the defendant posting the bond, be it signature or cash, and need not be accompanied by the defendant's physical departure from the jailhouse." *Id.* ¶ 14. In its analysis, this Court noted that under Wis. Stat. § 969.02(3)(d), a circuit court may impose, as a condition of release, "that the defendant return to custody after specified hours." *Dewitt*, 313 Wis. 2d 794, ¶ 14 (citation omitted). This Court said that "it would be absurd to conclude that conditions of release would then apply when the defendant was outside the jail but be 'turned off' upon return to custody." *Id.*

Dewitt does not support Jacobs's argument in this case because cash bond was posted in his Outagamie County and Forest County cases, he was released under Wis. Stat. §§ 946.49 and 969.02, and subject to the bond conditions the court imposed. When Jacobs was arrested and returned to custody, his bond conditions were not simply "turned off." *See Dewitt*, 313 Wis. 2d 794, ¶ 14.

D. Jacobs has not shown that he no longer had been released from custody on bond once he was arrested on warrants issued by the courts in Outagamie County and Forest County.

Jacobs argues that once he failed to appear in his Outagamie County and Forest County cases, and he was arrested on warrants from those counties, he was no longer released from custody in those cases. (Jacobs's Br. 28.) He points to Wis. Stat. § 968.09(1), which provides that "[w]hen a defendant or a witness fails to appear before the court as

required," or violates a term of bond, the court may issue a bench warrant for the defendant's arrest. And he points to Wis. Stat. § 968.09(2), which provides that "[p]rior to the defendant's appearance in court after the defendant's arrest under sub. (1), ch. 969 shall not apply." Jacobs reads Wis. Stat. § 968.09 to mean that a defendant arrested on a bench or body only warrant for failing to appear in court as required by his bond is not eligible for release on bond until they appear back in the court on the bench warrant.

However, Wis. Stat. § 968.09 says only that when a person is arrested on a warrant for failure to appear, a court may not release him from custody *again* until he appears. It does not say that the original bond upon which the defendant was released is revoked. For instance, if a person is released from custody on a signature bond, fails to appear, is arrested on a warrant, and appears in court the next day, nothing in Wis. Stat. § 968.09 says that his signature bond is revoked so he is not subject to the conditions of the bond.

As the circuit court here explained, "there are plenty of times where the Court authorizes warrants" after a defendant released on bond fails to appear. (R. 103:22.) The court said "I do not completely revoke all the terms of bond. We authorize warrants to get the person back into court. But it's not like the warrant is authorized and in that moment all conditions of bond evaporate." (R. 103:22.)

Here, the Outagamie County and Forest County circuit courts issued warrants instructing that Jacobs be "held for an appearance in court." Even if Wis. Stat. § 968.09 prohibited releasing him from custody again on bond, it does not provide that the bonds upon which he was initially released are revoked. It does not provide that the conditions of Jacobs's release, including that he not commit crimes, were no longer valid once he was arrested on a warrant for a bond violation and was in jail awaiting a court appearance.

Jacobs asserts that the State's position in the circuit court was one a defendant is released on bond, he is "perpetually and indefinitely" released on bond and therefore always subject to bond conditions and to bail jumping charges for violating those conditions. (Jacobs's Br. 20, 31.) However, the State is not asserting that bond conditions apply "perpetually and indefinitely." Under Wis. Stat. § 969.08(2), a defendant's release may be revoked if he commits a serious crime: "Violation of the conditions of release or the bail bond constitutes grounds for the court to increase the amount of bail or otherwise alter the conditions of release or, if the alleged violation is the commission of a serious crime, revoke release under this section." Revocation of release under Wis. Stat. § 969.08(2) requires "a finding by the court that the state has established by clear and convincing evidence that the defendant has committed a serious crime while on conditional release." Wis. Stat. § 969.08(5)(b)3.

Jacobs does not assert that either the Outagamie County or Forest County circuit courts found that he violated a condition of bond by committing a serious offense while on conditional release. Instead, Jacobs seems to assert that his bond was revoked on March 16, 2020, when "he was taken into custody on bench or body only warrants issued after he failed to appear in court as required by his bonds in each county." (Jacobs's Br. 33.) But Jacobs has not shown that the issuance of a warrant or being taken into custody revokes a person's bond, and he has not presented any evidence that the circuit court in either county revoked his conditional release.

Jacobs does not appear to argue that his bond in his Outagamie County and Forest County cases, and the conditions of bond, were revoked when his cash bail was forfeited or returned in those cases or when a new cash bail was set. And even if Jacobs were making those arguments, he has not pointed to authority or evidence in the appellate record to support those claims. This appeal stems from a

petition for leave to appeal. The record contains CCAP entries from the Outagamie County and Forest County cases, but no transcripts of the hearings at which the circuit courts addressed his bond conditions and violations, and nothing about the courts in either case revoking bond. Jacobs argues only that his release from custody on those cases ended when he was arrested on warrants and returned to custody to await a court appearance. As explained above, the circuit court rejected that argument and denied Jacobs's motion to dismiss the felony bail jumping charges. Since Jacobs has not shown that the circuit court erred in doing so, this Court should affirm.

CONCLUSION

This Court should affirm the circuit court's non-final orders denying Jacobs's motions to dismiss the felony bail charges in his five cases as well as his motions for reconsideration.

Dated: January 13, 2023.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 5391 words.

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 13th day of January 2023.

Electronically signed by:

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