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COURT OF APPEALS

STATE OF WISCONSIN
C O U R T O F A P P E A L S
DISTRICT III

Case Nos. 2022AP658-CR, 2022AP00659-CR,
2022AP00661-CR, 2022AP00662-CR,
2022AP00663-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

AARON L. JACOBS,

Defendant-Appellant.

On Appeal from a Non-Final Order Entered
in the Circuit Court for Shawano County, the
Honorable Katherine Sloma Presiding

REPLY BRIEF OF
DEFENDANT-APPELLANT

JEREMY A. NEWMAN

Assistant State Public Defender
State Bar No. 1084404

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 264-8566
newmanj@opd.wi.gov

Attorney for Aaron L. Jacobs

TABLE OF CONTENTS

	Page
ARGUMENT	3
CONCLUSION.....	9

CASES CITED

<i>State v. Dewitt,</i>	
2008 WI App 134, 313 Wis. 2d 794,	
738 N.W.2d 201	5, 6, 7, 8
 <i>State v. Orlik,</i>	
226 Wis. 2d 527, 595 N.W.2d 468	
(Ct. App. 1999)	5, 6

CASES CITED

968.09	3, 4
969.01(4)	4
969.08(2)	3, 4
Chapter 969.....	3

ARGUMENT

Mr. Jacobs' consistent and clear position in this interlocutory appeal is that after he was arrested and taken into custody on bench warrants from Outagamie and Forest Counties on March 16, 2020, he was no longer "released from custody on bond" from either county's custody. As a result, he is not subject to bail jumping charges for conduct alleged to have occurred after he was taken back into custody related to the Outagamie or Forest County bonds.

In response, the state argues that even after Mr. Jacobs was arrested on the bench warrants on March 16, 2020, he remained subject to the conditions of his prior release. The state takes this position despite agreeing that Mr. Jacobs' custody after March 16, 2020, was subject to Wis. Stat. § 968.09, which the state agrees meant that Mr. Jacobs' was not subject to release on bond until he first appeared in court to address his bond in each county. (State's Br. at 19-20).

The state's basis to believe Mr. Jacobs was nevertheless still subject to the conditions of his release after March 16, 2020, appears to be that Wis. Stat. § 969.08(2) allows for the revocation of bond and that Mr. Jacobs' presented no evidence that his bonds from Outagamie County or Forest County were "revoked." (State's Br. at 21-22).

The state's argument is flawed for a number of reasons. First, the state's focus on revocation of bond ignores the clear provisions of chapter 969, which grant courts discretion to set conditions of release,

including monetary conditions, and thereafter increase or reduce bail *or revoke* release. *See* Wis. Stat. §§ 969.01(4) and 969.08(2).

Bail is primarily intended to ensure a defendant's appearance in court. Wis. Stat. § 969.01(4). In these cases, both Outagamie County and Forest County set cash bail for Mr. Jacobs in 2019. Mr. Jacobs posted the cash bail in both counties and was released from custody. He subsequently failed to appear for hearings in each county. After his arrest on bench warrants issued by those counties on March 16, 2020, Mr. Jacobs subsequently appeared in each county pursuant to Wis. Stat. § 968.09 and the courts effectively increased his bail and Mr. Jacobs' remained in custody on the unposted cash bonds.

In Outagamie County, the court returned the previously posted bail to the poster, and Mr. Jacobs remained in custody thereafter as a result of his inability to re-post the \$2,000 bail. (R:22AP659: 11:2; 66:44; R:22AP658: 94:1-2; App. 7-11). (*See* State's Br. at 7). In Forest County, the court forfeited Mr. Jacobs' previously posted bail and set a new cash bond of \$10,000. (R:22AP659: 12:8-10; App. 32-34). (*See* State's Br. at 7). At no point after March 16, 2020, was Mr. Jacobs "released from custody on bond" from either Outagamie County or Forest County.

The state's focus on the lack of complete revocation of release is a red herring. Mr. Jacobs never argued that his bond was "revoked." He has consistently argued that after March 16, 2020, he was held in custody on the outstanding bench warrants and thereafter held on unfulfilled bonds from

Outagamie County and Forest County at all times relevant to this appeal. Mr. Jacobs' argument does not depend on his bonds having been revoked. His argument hinges instead on the simple fact that he cannot be subject to bail jumping for violating the conditions of his release after he was indisputably taken back into custody related to the Outagamie and Forest County bonds and not thereafter released on the bonds.

Second, the state misstates Mr. Jacobs' basic argument. (State's Br. at 16-19). Mr. Jacobs does not argue that his physical location in the Shawano County Jail alone means that he cannot be charged with bail jumping. Mr. Jacobs' physical location is legally irrelevant. What the statutes contemplate and what the case law clarifies is that a bail jumping charge will lie if someone is "released from custody on bond," regardless of whether they remain in jail for other reasons.

In *State v. Dewitt*, 2008 WI App 134, ¶17, 313 Wis. 2d 794, 738 N.W.2d 201, this Court held that a defendant who signed a signature bond in one case, but remained in custody and in jail on unpaid cash bonds from other cases, was properly subject to bail jumping for violating the conditions of his release on the signature bond. In other words, Dewitt was subject to the conditions of release on the signature bond even though he remained in custody and in jail on the unpaid cash bonds.

On the other hand, *State v. Orlik*, 226 Wis. 2d 527, 537, 595 N.W.2d 468 (Ct. App. 1999), stands for the simple proposition that a defendant is not subject

to the conditions of his bond, or bail jumping charges for violating those conditions, if, at the time of the alleged violation, he is not “released from custody on bond.” Orlik’s bond was set at \$320,000 and he was unable obtain his release by posting the cash bond. Thereafter, even when he violated the conditions set forth in the bond, he faced no lawful charge of bail jumping because he was not “released on bond” at the time of his alleged violations.

As explained in Mr. Jacobs’ brief-in-chief, this appeal falls somewhere between *Dewitt* and *Orlik*. Mr. Jacobs previously obtained his released from custody on the Outagamie and Forest County bonds, but at the time of his alleged violations at issue in these cases, he had been taken back into custody on those bonds and was no longer “released from custody on bond.” Eventually, Mr. Jacobs returned to both counties and his bonds were modified and he remained in custody on those unfulfilled bonds.

Thus, the question is not whether Mr. Jacobs can be charged with felony bail jumping for conduct committed while he was in jail. The question is whether, after his arrest on March 16, 2020, on bench warrants from Outagamie and Forest Counties, Mr. Jacobs remained “released from custody on bond.” The answer must be “no.”

The state’s counter arguments fail because they ignore the reasoning and basic logic of *Orlik* and *Dewitt*, and the relevant statutes. For example, imagine if Orlik’s bond had originally been set at \$3,200 instead of \$320,000, and he posted that smaller cash bond and obtained release. At that time, and for

however long he remained “released from custody on bond,” Orlik would be subject to the other conditions of the bond and subject to bail jumping charges if he violated those conditions. However, if Orlik’s bond was then increased from \$3,200 to \$320,000, and he was unable to post that heightened amount, he would be taken back into custody on the bond and remain in custody until could post the higher cash bond.

Under the state’s position taken here, this hypothetical Orlik would be subject to bail jumping charges even after he was taken back into custody on the modified \$320,000 bond because he had previously been released from custody on [a \$3,200] bond” and his release on bond had not been completely revoked.

Or, consider a modified version of *Dewitt* in which Dewitt violates a condition of his signature bond and the court thereafter orders a cash bond that he is unable to post. Dewitt would be taken legally back into custody on the new unfulfilled cash bond. Under the state’s theory, Dewitt still faces bail jumping charges for subsequent violations of the original signature bond because he had at one point in time been “released from custody on bond.”

Charging someone with violating the conditions of release from custody *after* they are taken back into custody *on that bond* does not comport with the logic of *Orlik* or *Dewitt* and would result in absurd results.

Third, the state’s position ignores the statutory context within which the bail jumping statute fits. Repeatedly, the state lists the three elements of bail jumping and seems to check each box by ignoring

the context of bail jumping generally or Mr. Jacobs' cases specifically. (State's Br. at 15-19). From the state's perspective, Mr. Jacobs was charged with a felony, was released from custody on bond, and violated the conditions of the bond. However, context matters and the state's position does not hold up to scrutiny.

Bail jumping is a state sanctioned criminal penalty for violating the bond contract. In exchange for release from custody on pending charges, the defendant agrees to abide by the conditions set forth in the bond. A defendant cannot obtain release from custody on bond without subjecting himself to the conditions of the bond, which can include cash bail or signature. At the same time, the state cannot subject a defendant to terms and conditions of release unless the defendant is "released from custody on bond."

The state's position here creates a contractual situation where a defendant is perpetually subject to the conditions of a bond even if they are no longer receiving their end of the bargain: release on bond. While acknowledging that there can be instances where a defendant is "released from custody on bond," but remains physically in jail (*Dewitt*), Mr. Jacobs' position is simply that if a defendant is no longer released from custody on the bond at issue, then they cannot simultaneously be charged with violating the conditions of release.

CONCLUSION

For the reasons argued above, and as previously argued in Mr. Jacobs' brief-in-chief, this Court should reverse and remand these cases to the circuit court with order to dismiss the felony bail jumping charges at issue in this appeal.

Dated this 24th day of January, 2023.

Respectfully submitted,

Electronically signed by

Jeremy A. Newman

JEREMY A. NEWMAN

Assistant State Public Defender

State Bar No. 1084404

Office of the State Public Defender

Post Office Box 7862

Madison, WI 53707-7862

(608) 264-8566

newmanj@opd.wi.gov

Attorney for Aaron L. Jacobs

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 1,589 words.

Dated this 24th day of January, 2023.

Signed:

Electronically signed by

Jeremy A. Newman

JEREMY A. NEWMAN

Assistant State Public Defender