COURT OF APPEALS
DECISION
DATED AND FILED

February 4, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2513-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SCOTT R. WEBER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Lafayette County: WILLIAM D. JOHNSTON, Judge. *Affirmed.*

DYKMAN, P.J.[1] Scott R. Weber appeals from a judgment convicting him of one count of disorderly conduct, contrary to § 947.01, STATS., and from an order sentencing him to probation. The conviction resulted from a dispute he had with, Deana K. Jones, the mother of his child. Scott argues that

[1] This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

because he committed no act of violence, the evidence was insufficient to convict him. Scott also argues that the length and conditions of his probation are excessive and not supported by facts in the record. We conclude that the evidence was sufficient to support Scott's conviction, and that the circuit court did not erroneously exercise its discretion in setting the terms and conditions of his probation. Accordingly, we affirm.

BACKGROUND

On November 9, 1997, Scott and Deana Jones met at the house they had formerly shared in Benton, Wisconsin. The purpose of the meeting was to allow Scott to visit with their five-year-old daughter. Deana's three-year-old son, and her adult brother, Shannon, were also present. Following the meeting, Scott parked his vehicle so that he could observe the house and speak to Deana after Shannon left. However, Scott observed Deana and Shannon leaving the house at the same time in separate vehicles.

Scott followed the two vehicles and realized that Deana and Shannon were driving to Family Advocates, a domestic abuse shelter in Platteville, Wisconsin. Scott then passed both vehicles and forced them to stop on the shoulder of the road. A verbal confrontation between Scott and Deana ensued, and Weber grabbed Deana's keys from her car and put them in his pocket. And, when Shannon attempted to leave, Scott jumped on the hood of Shannon's vehicle, and he remained there until police arrived.

A jury convicted Scott of disorderly conduct, contrary to § 947.01, STATS. The circuit court imposed a sentence of two years' probation with several conditions. Scott argues that, when the circumstances surrounding the incident are considered, he committed no act for which he may be convicted of disorderly

conduct. Scott also challenges the duration of his probation because it is the maximum allowed under the law. Finally, Scott challenges the trial court's decision regarding probation in which it ordered him to: (1) serve thirty days in the Lafayette County Jail with work release; (2) pay Shannon Jones for the damages done to his vehicle; and (3) submit to alcohol abuse assessment.

DISCUSSION

A. *The Disorderly Conduct Conviction*

Our review of the sufficiency of evidence to support a conviction is limited to determining whether the evidence, considered most favorably to the conviction, is so insufficient in probative value and force that no jury acting reasonably could be convinced beyond a reasonable doubt that the elements of the crime charged had been proven. ***State v. Ray***, 166 Wis.2d 855, 861, 481 N.W.2d 288, 291 (Ct. App. 1992). The trier of fact is to determine the credibility of the witnesses and the weight to be given the evidence. *See* ***State v. Olson***, 103 Wis.2d 455, 462, 308 N.W.2d 917, 921 (Ct. App. 1981), *aff'd*, 106 Wis.2d 572, 317 N.W.2d 448 (1982).

Section 947.01, STATS., states that: "Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor." The statute does not proscribe all conduct that tends to annoy other persons, only conduct that reasonably offends the sense of decency or the propriety of the community. *See* ***State v. Vinje***, 201 Wis.2d 98, 102, 548 N.W.2d 118, 120 (Ct. App. 1996). Therefore, the conduct at issue may or may not be directed at a person or persons. ***Id.***

Scott testified at trial that he stopped the vehicles because he did not want Deana to take their daughter to Family Advocates. Scott stated that he only leapt onto the hood of Shannon's vehicle to avoid injury. However, based on Deana's and Shannon's testimony, the jury could be convinced beyond a reasonable doubt that Scott leapt into the path of Shannon's vehicle in order to prevent Shannon from taking his daughter to Family Advocates. Further, the jury could reasonably have concluded that Scott's actions tended to provoke a disturbance of the type which reasonably offends the sense of decency and propriety of the community. The disorderly conduct statute prohibits more than violent conduct. Forcing a vehicle off the road, arguing and jumping on a vehicle's hood can be both boisterous and otherwise disorderly.

B. *The Sentence and the Terms of Probation*

Sentencing is within the discretion of the trial court. *See* ***State v. Haskins***, 139 Wis.2d 257, 268, 407 N.W.2d 309, 314 (Ct. App. 1987). The court should consider the gravity of the offense, the character and rehabilitative needs of the defendant, and the need to protect the public. *See* ***State v. Paske***, 163 Wis.2d 52, 62, 471 N.W.2d 55, 59 (1991). The legislature intended for maximum sentences to be reserved for the more egregious statutory violations. *See* ***McCleary v. State***, 49 Wis.2d 263, 182 N.W.2d 512 (1971).

Section 973.09(1)(a), STATS., provides a trial court with broad discretion when placing a convicted person on probation to impose any conditions which are reasonable and appropriate. *See* ***State v. Beiersdorf***, 208 Wis.2d 492, 502, 561 N.W.2d 749, 754 (Ct. App. 1997). We will uphold a sentencing court's decision to order probation so long as it did erroneously exercised its discretion. *See* ***id.***

First, Scott contends that a sentence of two years' probation is excessive because it is the maximum term of probation. Scott argues that the circuit court erroneously exercised its discretion because it failed to examine the circumstances which provoked Scott's actions, and that therefore a maximum term of probation was unjustified. We disagree.

We note that the maximum sentence for disorderly conduct, a Class B misdemeanor, can include ninety days in jail and a fine of up to $1,000. We also note that the circuit court stated that this was "one of the worst cases" of disorderly conduct the court had encountered because of the potential danger his actions created for the participants and the public. Further, the trial court carefully considered Weber's character, his work ethic, his lack of remorse for his actions, and his subsequent conduct toward Deana. The circuit court concluded that a harsh sentence was necessary, but demonstrated flexibility by considering Scott's work commitments. Therefore, we cannot conclude that the circuit court erroneously exercised its discretion in sentencing Scott to two years' probation. And for these same reasons we cannot conclude that the circuit court erred in ordering thirty days in jail with work release as a condition of probation.

Second, Scott challenges the jurisdiction of the trial court to order restitution as a condition of his probation because no "property crime" was charged. To determine whether a person who is convicted of disorderly conduct may be required to make restitution to a person for damage to his property requires us to construe §§ 973.09(1)(b) and 973.20, STATS. Statutory construction is a question of law that we review de novo. *See* ***Vinje***, 201 Wis.2d at 101, 548 N.W.2d at 120. If the statute is clear and unambiguous, our inquiry ends and we apply the language of the statute to the facts of the case. ***Id***. at 102, 548 N.W.2d at 120.

Section 973.09(1)(b), STATS., provides that: "If the court places the person on probation the court shall order the person to pay restitution under sec. 973.20, unless the court finds there is a substantial reason not to order restitution as a condition of probation." Section 973.20(1r), STATS., provides that when a court imposes sentence or orders probation for a crime, the court "shall order the defendant to make full or partial restitution under this section to *any* victim of a crime considered at sentencing, unless the court finds substantial reason not to do so." (Emphasis added.) The legislature has placed no limitations upon what crimes may require restitution. We conclude that the legislature's use of the word "any" suggests that it intended to provide protection to all persons who are damaged by the commission of a crime. In ***Vinje***, we concluded that where an act constituting disorderly conduct is directed at a person, that person is a victim of the crime, even though the crime itself does not require a victim. ***Vinje***, 201 Wis.2d at 104-105, 548 N.W.2d at 121.

Shannon was a victim of Scott's disorderly conduct. Scott forced Shannon to stop his vehicle against his will. The jury likely inferred that Scott leapt onto the hood of Shannon's vehicle to prevent him from leaving the scene of the altercation. It was during this act that the hood of Shannon's vehicle was damaged. We conclude that Shannon was a victim of Scott's disorderly conduct. The circuit court did not err in ordering Scott to pay restitution for damage to Shannon's vehicle.

Scott also argues that the circuit court erred when it ordered him as a condition of his probation to undergo an evaluation for alcohol abuse (AODA) when there was no evidence that alcohol was a factor in the incident charged. American Bar Association (ABA) standards relating to probation call for an individualized analysis of what conditions of probation are appropriate.

AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE § 18-2.3 (2d ed. 1980). The supreme court has previously endorsed the ABA standards relating to probation. ***Edwards v. State***, 74 Wis.2d 79, 83, 246 N.W.2d 109, 111 (1976). Section 18-2.3 of these ABA standards approves of the use of available medical and psychiatric treatment when appropriate. ***Id.*** The circuit court required Scott to submit to AODA as a condition of probation. The trial court did so in order to determine if alcohol counseling would be useful in helping Scott to properly manage emotional stress. Given that the circuit court articulated a rational reason to require an AODA assessment based upon the characteristics of the individual defendant, we cannot conclude that the circuit court erroneously exercised its discretion. Accordingly, we affirm the judgment and order.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.