

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 17, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP874-CR

Cir. Ct. No. 2011CF346

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD F. ROMANELLI, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County:
ALAN J. WHITE, Judge. *Affirmed.*

Before Lundsten, Sherman and Blanchard, JJ.

¶1 PER CURIAM. Ronald Romanelli appeals a judgment of conviction. The issue is whether the circuit court properly denied his motion for severance of charges. We conclude that any error was harmless. We affirm.

¶2 The charges on which Romanelli was convicted can be grouped into two categories. One group relates to his conduct in an apartment and his departure from the apartment, and includes substantial battery, battery, disorderly conduct, and obstructing an officer. The second group relates to his removal of a GPS monitoring device. Both were alleged to have occurred on the same day.

¶3 Romanelli moved to sever the two groups of charges. The circuit court denied the motion.

¶4 On appeal, Romanelli seeks retrial of the apartment charges on the ground that the GPS counts should have been severed from them. We are not persuaded, on initial review, that the circuit court erred in denying severance. However, even if it did, we conclude that any error was harmless. Romanelli does not dispute that harmless error analysis is appropriate if such an error occurred.

¶5 As to the apartment counts, two women, each a victim, testified in a manner that supported the convictions. Romanelli also testified. He agreed with the victims that a physical altercation occurred, during which he struck each of them, but he cast his actions as motivated by self-defense. He also admitted fleeing from police. The jury was given a self-defense instruction on the substantial battery and battery counts. The jury acquitted Romanelli of several, more serious, charges in connection with the apartment incident. Those charges included attempted first-degree intentional homicide, false imprisonment, strangulation, and attempted intimidation of a victim.

¶6 As can be seen from this brief summary, as to the actual conviction counts, Romanelli's *own testimony* admitted to acts that would meet the elements of the offenses. Accordingly, it appears that the main issue for the jury as to those

counts was whether the State disproved his claim of self-defense. This means that self-defense should be the focus of our harmless error analysis.

¶7 With this focus, we begin with the obstructing count. Romanelli's own testimony admitted his flight from police. Self-defense was not a defense to that charge. Therefore, any error in admitting the GPS evidence was harmless as to that charge.

¶8 We turn to the remaining convictions, which were for substantial battery, battery, and disorderly conduct. Romanelli claims that prejudice occurred from the GPS counts because the jury heard that he was wearing a GPS device that was assigned to him by the local probation and parole office of the Department of Corrections, that it was attached to him when he was "leaving the institution," and that he was wearing the device pursuant to an order issued under a certain statute.

¶9 None of this evidence goes directly to whether it was more or less likely that Romanelli acted in self-defense in the apartment. Therefore, if any prejudice occurred, it came from a propensity inference. That is, because Romanelli committed some prior criminal act, he probably committed the crimes charged in this case also.

¶10 Recognizing the potential for such an inference, the court instructed the jury that evidence "has been presented regarding the fact [that] the defendant was wearing a GPS unit," but the jury "may not consider this evidence to conclude that the defendant has a ... certain character trait" that he acted in conformity with. The instruction further stated: "You may not speculate on the reasons for which the defendant was required to wear this unit."

¶11 We conclude that any error in joining the GPS counts was harmless. First, the cautionary instruction discouraged the jury from drawing additional inferences from the GPS device. Romanelli criticizes the instruction as incomplete because it did not address the evidence about his being on probation or parole, his being in an institution, or his being monitored pursuant to statute. However, Romanelli does not state that he objected to the instruction on this ground. Furthermore, the court also gave the standard instruction about the defendant's prior convictions, which were revealed when he testified. It told the jury that evidence of prior convictions was received solely as to his credibility, must not be used for any other purpose, and is not proof of guilt for the offense now charged. Between these two instructions, we are satisfied that the jury was adequately instructed on the limited use it could make of the evidence related to the GPS device and the circumstances under which Romanelli was wearing it.

¶12 Second, as we stated, the GPS evidence did not bear directly on self-defense. Instead, the jury heard testimony from two victims and Romanelli that went directly to that issue. With the jury having the opportunity to view these live witnesses, we are satisfied that any additional indirect effect from the GPS evidence was so minimal as to leave no reasonable probability that it contributed to the conviction.

¶13 Romanelli also argues that we should reverse under WIS. STAT. § 752.35 (2013-14) on the ground that the real controversy was not fully tried. The argument is based on the same claimed prejudice from joinder discussed above. We decline to reverse on this basis.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5. (2013-14).

