

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 13, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-3299-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOAN SCHMITZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:
DENNIS G. MONTABON, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

¶1 PER CURIAM. Joan Schmitz appeals from a judgment convicting her of felony bail jumping. She contends that the jury heard insufficient evidence to find her guilty, and that she received insufficient notice of the violated bail condition. We affirm.

¶2 A condition of Schmitz's bail on pending charges directed her to have no contact with Andrea N. The court described the condition as "no contact directly, indirectly, by telephone or mail or through other individuals." The bond order contained similar language.

¶3 One week later Schmitz returned to court to attend a hearing in her pending case. She was seen entering the courtroom with Andrea N., Andrea N.'s mother and another woman. The group sat down, with Schmitz next to Andrea N. Witnesses testified that they appeared to communicate, but no one could definitely say they did so. There was no evidence of any physical contact. The courtroom was crowded but other seats were available.

¶4 Schmitz testified that she sat first and Andrea N. sat next to her. At one point she spoke across Andrea N. to the next person down the row, but never said anything directly to Andrea N. She stated that she did not intentionally violate her bond because her understanding of "contact" did not extend to just sitting next to Andrea N. in a courtroom. Andrea N. also testified and confirmed Schmitz's version of what occurred in the courtroom, as did two others sitting by Schmitz and Andrea N., including Andrea N.'s mother. (The latter was Schmitz's companion.)

¶5 The evidence was sufficient to find Schmitz guilty. To commit a bail jumping offense, one must intentionally violate the condition of a bond. *See* WIS. STAT. § 946.49(1) (1997-98). Schmitz contends that there was no evidence of her intent because there was no evidence she knew or understood that her close proximity to Andrea N. violated the no contact provision. We disagree. A reasonable jury could infer, using its common knowledge and ordinary experience, that Schmitz understood that the "no contact" provision barred close physical

proximity as well as express communication or physical touching. That Schmitz testified otherwise is of no consequence. The jury was free to disbelieve that testimony. *See State v. Poellinger*, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990).

¶6 The no contact provision of Schmitz’s bond was not unconstitutionally vague. Due process requires fair notice. *See State v. Ehlenfeldt*, 94 Wis. 2d 347, 355, 288 N.W.2d 786 (1980). Here, the no contact provision gave Schmitz fair notice to stay away from Andrea N.

“[W]e can never expect mathematical certainty from our language.” Accordingly, the standard applied to examine a statute or ordinance has been expressed as follows: “[a] fair degree of definiteness is all that is required to uphold a statute or regulation, and a statute or regulation will not be voided merely by showing that the boundaries of the area of proscribed conduct are somewhat hazy.”

Milwaukee v. K.F., 145 Wis. 2d 24, 33, 426 N.W.2d 329 (1988) (citation omitted).

¶7 Schmitz also contends that she received ineffective assistance from her trial counsel. Because she did not file a postconviction motion or seek a hearing in the trial court to test that assertion, she has waived this issue on appeal. *See State v. Rogers*, 196 Wis. 2d 817, 826, 539 N.W.2d 897 (Ct. App. 1995). She also contends that the no contact provision of the bond was unconstitutionally over-broad. That issue was not raised in the trial court either, therefore it is also waived.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5 (1997-98).

