COURT OF APPEALS
DECISION
DATED AND RELEASED

JUNE 7, 1995

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

NOTICE

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No. 95-0027-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SYLVESTER M. HAMILTON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Kenosha County: MICHAEL S. FISHER, Judge. *Affirmed.*

BROWN, J. This is Sylvester M. Hamilton's appeal of a disorderly conduct conviction and two convictions for bail jumping. Hamilton had been released on bail for a bad check charge at the time of the disorderly conduct arrest, and bail had been conditioned on his keeping out of further trouble. Hence, the bail jumping charges.

Hamilton alleges that a domestic dispute he had with his girlfriend was not the type of conduct which could be construed as tending to

create a disturbance. He also argues that since prosecution for bail jumping has, as a condition precedent, his knowing violation of his bond, and since he did not know that his conduct was disorderly, the bail jumping convictions must be reversed. Because the jury had adequate facts to infer that Hamilton's conduct tended to disrupt good order and because the record shows that Hamilton himself knew at the time of the domestic dispute that his conduct might be grounds for arrest, this court affirms.

A brief sketch of the facts is set forth here with a more detailed narration later. As we indicated at the outset, the disorderly conduct arrest of Hamilton happened after he had been released on bail for a pending charge of issuing worthless checks. His bail was conditioned on his not committing any crime or engaging in any criminal activity during the pendency of the worthless check case. At about 8:00 p.m. on the evening in question, Hamilton went to a trailer park where his girlfriend was living with their two-year-old son. The girlfriend was pondering whether to continue their relationship. Hamilton left with the understanding that his girlfriend wanted to further consider it and would give Hamilton her decision when he returned.

When Hamilton returned at about 2:00 a.m., he saw that his girlfriend was packed to leave. The girlfriend informed him that she wanted to end the relationship and return to her former husband. Hamilton became upset with her decision and began arguing with her. The argument became physical, but was mainly confined to the trailer until the girlfriend woke the child and started moving boxes of her possessions towards the door. Hamilton threw the

boxes outside and was yelling and screaming. Two neighbors heard Hamilton. One testified that she remembered a male voice repeatedly saying, "You're not going anywhere." Hamilton's yelling and screaming went on for at least twenty minutes before the police were called. After the police were called, violent, loud and abusive behavior was heard and observed for fifteen more minutes until the police arrived. A jury convicted Hamilton of disorderly conduct and two bail jumping counts.

Hamilton initially claims that the State failed to prove beyond a reasonable doubt that his conduct tended to cause or provoke a disturbance. He argues that this was simply a domestic dispute, which conduct was not enough to "offend the normal sensibilities of average persons." *See* ***State v. Givens,*** 28 Wis.2d 109, 122, 135 N.W.2d 780, 787 (1965). He acknowledges that two neighbors heard shouting and one neighbor was even awakened by it, but claims that this should not be considered out of the ordinary in the close confines of a trailer park. Hamilton contends that neither neighbor found the noise disturbing enough to call the police or even complain to Hamilton.

Hamilton contrasts the facts in this case with published decisions where disorderly conduct was found for refusing an order to leave a restricted site at an airplane crash,[1] where a juvenile brought a gun to school and disrupted a class[2] and where a man made loud and abusive comments to a woman in a restaurant and then taunted persons to fight when they asked him

[1] *See* ***City of Oak Creek v. King,*** 148 Wis.2d 532, 436 N.W.2d 285 (1989).

[2] *See* ***State v. Michelle A.D.,*** 181 Wis.2d 917, 512 N.W.2d 248 (Ct. App. 1994).

to apologize.[3] Hamilton asserts that those cases centered on disturbances to members of the public. He contends that this elemental fact is missing in his case.

Hamilton likens his situation to ***State v. Becker,*** 51 Wis.2d 659, 662, 188 N.W.2d 449, 452 (1971), where a bystander yelled "very loudly" at officers who were arresting a shoplifter. The supreme court wrote that while the bystander's violent conduct was enough to uphold a disorderly conduct conviction, his having yelled "very loudly" to police would not have been enough because there was no testimony about the offensiveness of his yelling. Hamilton asserts that, here too, the neighbors did not seem offended by Hamilton's yelling and therefore no disturbance of the public took place.

We do not agree. As explained in WIS J I—CRIMINAL 1900, the principle upon which this offense is based is that in an organized society, one should so conduct himself or herself as to not unreasonably offend the senses or sensibilities of others in the community. We view the word "unreasonable" as the operative idea. It is the jury's responsibility to weigh whether the conduct is "unreasonable."

The facts, taken in a light most favorable to the jury's verdict, paint a different picture than that described by Hamilton. Meghan McGillis testified that she was sleeping over at a Jeanna Manna's trailer, which was about two or

[3] *See* ***State v. Bougneit,*** 97 Wis.2d 687, 294 N.W.2d 675 (Ct. App. 1980).

three trailers down from the one in which Hamilton's girlfriend was residing. She testified that Hamilton's yelling and swearing woke her up. Not only did she hear yelling and screaming, she also heard doors slamming. This went on for twenty minutes. At this point, the girlfriend came to the trailer in which McGillis was staying.

Manna testified that Hamilton had followed the girlfriend to her trailer and was standing right behind her when the girlfriend asked Manna if she could use the telephone to call the police. Manna invited the girlfriend in and shut the door on Hamilton, who was giving Manna mean looks. Manna recalled that she felt secure because her dog was guarding the entranceway.

After the telephone call, the girlfriend left and McGillis went outside to watch because she was concerned. There was more yelling by Hamilton. The girlfriend just wanted to get her things and leave. Hamilton kept repeating that she was not going anywhere and that if she did leave, she was in big trouble. McGillis observed Hamilton grab the girlfriend and push her. Another time, McGillis observed Hamilton grab the girlfriend's arm while the baby was in her arms. The baby was crying. The girlfriend testified that while outside, Hamilton was holding the baby and when the girlfriend attempted to retrieve the baby, Hamilton swung his arm out, hitting her in the cheek.

Of significance, McGillis asked Manna to call the police after observing Hamilton's continuing behavior. Fifteen minutes of yelling passed

between the time of the telephone call and the arrival of the police. McGillis reported that *she herself* was scared because she thought Hamilton was really going to do something and that is why she stayed until the police came. Thus, the jury could infer the following. The yelling and swearing went on for twenty minutes before a call was made to the police and for fifteen more minutes after Hamilton knew the police were coming. Hamilton could have ended the altercation simply by letting the girlfriend leave but, in fact, he prevented the girlfriend from getting her possessions. Contrary to Hamilton's view of the evidence, McGillis was scared enough about what was going to happen that she asked Manna to call the police. And she came outside to observe Hamilton because of this concern. This shows that McGillis and Manna were concerned about the offensiveness of Hamilton's behavior, far more so than the passive interest Hamilton tries to impress upon us.

Another facet of this case downplayed by Hamilton is the violent behavior on his part. According to McGillis, he pushed the girlfriend and grabbed her. He hit the girlfriend's chin on another occasion. But what the jury could really determine to be unreasonable was that his violent behavior could have harmed the child. He grabbed the girlfriend's arm while she was holding

the baby. He pushed the girlfriend away while he was holding the baby. Surely, the jury could conclude that this conduct was an outrage to the sense of public decency. Certainly, McGillis and Manna were concerned enough to stay with the situation until the police arrived. And Manna was scared enough when Hamilton followed the girlfriend to her doorstep to shut the door on him. To depict this whole situation as a mere private domestic dispute that was of no particular concern to the neighboring public is a cosmetic view of the facts. We conclude that the jury could find plenty of evidence of conduct which was offensive to public sensibilities. We will not disturb the verdict.

Hamilton's claim that he did not know his conduct was disorderly and therefore cannot be found to have violated the conditions of his bail also fails. Hamilton himself was concerned that his actions would get him into trouble. He testified that he wanted to call the police so that they would know he was not being abusive toward his girlfriend. He was calling them for his own "protection." When a person pushes his girlfriend, yells, slams doors and swears for twenty minutes and then yells and swears for fifteen minutes after police are called, knows that he can end the situation at any time by letting the girlfriend leave, refuses to allow her to retrieve her possessions, endangers the safety of a baby and has two people concerned enough that they are drawn into the conflict, that person has sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. *See* ***United States v. Petrillo***, 332 U.S. 1, 8 (1947); ***State v. Tronca,*** 84 Wis.2d 68, 86, 267 N.W.2d 216, 224 (1978). We reject Hamilton's argument.

By the Court. – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.