COURT OF APPEALS
DECISION
DATED AND RELEASED

February 18, 1997

NOTICE

No. 96-2608-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHAEL CRAWFORD,

Defendant-Appellant.

APPEAL from judgments of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed*.

CURLEY, J. Michael L. Crawford appeals from judgments of conviction for bail jumping and disorderly conduct. He raises several issues for review: (1) whether the trial court lacked jurisdiction to try him because the criminal complaint did not charge him with a known offense; (2) whether there was sufficient evidence to support his conviction for disorderly conduct; (3) whether his First Amendment rights were violated by his conviction for disorderly conduct; and (4) whether the trial court erroneously exercised its

discretion "in sending the case back to the jury after accepting the verdict." This court rejects his arguments and affirms.[1]

I. BACKGROUND.

The following facts are undisputed. On the afternoon of October 3, 1995, Crawford was sleeping on the steps of the Catholic Aids Ministry Office of Saint John the Evangelist Cathedral in downtown Milwaukee. Peter Habetler, the parish administrative manager, found Crawford on the office steps and asked him to leave, informing him that he could not sleep there. Later that afternoon, Habetler found Crawford sleeping on the steps and again asked him to leave. Habetler shouted at Crawford to wake him, shook him, and removed the blanket from his face. Habetler told him that if he was not gone when Habetler returned, he would call the police. Crawford asked him not to call the police. Habetler left and Crawford fell back asleep. When Habetler returned and saw Crawford sleeping, he called the police.

What occurred next is somewhat disputed. Habetler testified that when the police arrived and tried to wake Crawford, "he became abusive and used obscenities." Habetler testified that Crawford was "very uncooperative," and was "yelling, accusing them of stealing his shoes." This continued for ten minutes and, according to Habetler, Crawford continued to use obscenities, including what Habetler referred to as the "F" word. Habetler later, on cross-examination, acknowledged that Crawford had stated, among other things, "where is my fucking shoe?"[2]

One of the arresting police officers testified that when they attempted to wake Crawford, he became "boisterous and loud," and said that "he didn't have to leave, that we should just write him a ticket and be on our way." The officer testified that they again told Crawford he could not sleep on the steps, and Crawford "became more boisterous and loud and started yelling" at the police. The officer also testified that Crawford was yelling, "Fuck you, get

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

[2] Habetler also testified that he asked the police why they were arresting him and they said that "[i]t was because he continued to swear at them and they weren't going to take that."

out of my face," and "fuck you" all of the time. Finally, the officer testified that a few people in the nearby park began to look to see what was going on. Crawford was arrested and charged with disorderly conduct. He was released on bail. Crawford stipulated that, as a condition of his release on a personal recognizance bond, he was ordered not to have any contact with Peter Habetler or Saint John the Evangelist Cathedral.

Another officer then testified that on October 7, 1995, he found Crawford sleeping on the steps of the cathedral and he was arrested again. Crawford was charged with bail jumping for violating the condition of his bond. The cases were consolidated and Crawford received a jury trial. The jury convicted him of both charges.

II. ANALYSIS.

Crawford first argues that the trial court lacked jurisdiction to try him because the criminal complaint did not charge him with an offense known to law. In essence, he is challenging the sufficiency of the criminal complaint.

> [A] complaint, including documents that are made a part of it by reference, is a self contained charge, and it alone may be considered in determining probable cause. Within the four corners of the document must appear facts that would lead a reasonable [person] to conclude that probably a crime had been committed and that the defendant named in the complaint was probably the culpable party.

State v. Haugen, 52 Wis.2d 791, 793, 191 N.W.2d 12, 13 (1971). The complaint, therefore, must answer "certain fundamental questions ... "What is the charge? Who is charged? When and Where is the offense alleged to have taken place? Why is this particular person being charged? [and] … 'Who says so?'" ***State v. Elson,*** 60 Wis.2d 54, 57, 208 N.W.2d 363, 365 (1973) (citations omitted). Further, "[i]n testing the complaint, both facts and the reasonable inferences arising from the facts may be looked to." ***Id.*** at 58, 208 N.W.2d at 366.

Crawford was charged with disorderly conduct. Section 947.01, STATS., provides:

> 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 criminal complaint was sufficient to charge Crawford with disorderly conduct. The complaint alleged in part that on October 3, 1995, Crawford was sleeping on cathedral property. The complaining officer averred that Habetler informed him that he found Crawford sleeping on church property, and that Habetler told Crawford he had to leave or he would call the police. The complaining officer further averred that he spoke to Crawford, and that Crawford began arguing with him.

The complaint then alleged:

> [The complaining officer] reports that he asked the defendant if he knew he was trespassing, at which time the defendant replied "Just write me a ticket." [The complaining officer] reports that he told the defendant to get his belongings together and leave, however the defendant continued to lay on the ground refusing his order. [The officer] reports that he told the defendant he would arrest him if he didn't leave, at which time the defendant sat up and stated "Where the fuck are my shoes" and stood up and began to yell at [the officer] stating, "You stole my fucking shoe" and "I'm not leaving to (sic), you giving me my fucking shoe." [The officer] reports that the defendant continued to yell and shout obscenities and because of the defendant's yelling and his refusal to leave, he was placed under arrest.

Within the four corners of the criminal complaint were sufficient allegations and alleged facts to establish probable cause that Crawford committed the offense of disorderly conduct. It established that he engaged in, at a minimum, boisterous conduct, which would tend to cause or provoke a disturbance. Crawford's alleged continued yelling and shouting of obscenities, and refusal to leave the cathedral property support a finding of probable cause for disorderly conduct. He was charged with an offense known to law.

Crawford next argues that the evidence was insufficient to support his convictions. He is incorrect.

The standard of review that this court applies when testing the sufficiency of the evidence is recited in ***State v. Poellinger***, 153 Wis.2d 493, 451 N.W.2d 752 (1990):

> [I]n reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

Id. at 507, 451 N.W.2d at 757-758 (citations omitted). Stated another way: "[t]his court will only substitute its judgment for that of the trier of fact when the fact finder relied upon evidence that was inherently or patently incredible—that kind of evidence which conflicts with the law of nature or with fully-established or conceded facts." ***State v. Tarantino***, 157 Wis.2d 199, 218, 458 N.W.2d 582, 590 (Ct. App. 1990). Additionally, the trier of fact is the sole arbiter of the credibility of witnesses and alone is charged with the duty of weighing the evidence. *See* ***Poellinger***, 153 Wis.2d at 506, 451 N.W.2d at 756.

Crawford argues that his conduct did not constitute disorderly conduct. He is wrong. A jury could clearly convict Crawford of disorderly conduct after reviewing the testimony. Crawford yelled and shouted obscenities both at the officers and in general. He would not leave the private property of the cathedral after he was repeatedly told to do so, and this conduct, which lasted for ten minutes, brought onlookers to the scene.

Further, the jury could convict Crawford of bail jumping because the evidence clearly showed that he violated a condition of his bond by returning to the cathedral property after he was ordered not to have any contact with the property. *See* § 946.49, STATS. (defining bail jumping); ***State v. Dawson,*** 195 Wis.2d 161, 165, 536 N.W.2d 119, 120 (Ct. App. 1995) (stating among other things that to be convicted of bail jumping the State must show that the defendant intentionally violated a condition of his bond).

Crawford next contends that his conviction for disorderly conduct violated his free speech rights under the First Amendment to the United States Constitution. He argues that when he was swearing, he was exercising his right to object to the authority of the police.

Whether a conviction violates a defendant's right to free speech under the First Amendment is an issue of constitutional law. Constitutional questions are reviewed independently of the conclusion of the lower courts. *See* ***State v. Bangert***, 131 Wis.2d 246, 283, 389 N.W.2d 12, 30 (1986) (citation omitted).

This court's conclusion is guided by the law set forth in ***State v. Zwicker***, 41 Wis.2d 497, 164 N.W.2d 512 (1969), and ***State v. Becker,*** 51 Wis.2d 659, 188 N.W.2d 449 (1971). In ***Zwicker***, our supreme court explained the existence of limits on the right to free speech as follows:

> Constitutionally protected rights, such as freedom of speech and peaceable assembly, are not the be all and end all. They are not an absolute touchstone.... To recognize the rights of freedom of speech and peaceable assembly as absolutes would be to recognize the rule

> of force; the rights of other individuals and of the public would vanish. Certain activities are outside the protection of the first and fourteenth amendments.

Id. at 509-10, 164 N.W.2d at 518. In ***Becker***, the supreme court stated that:

Conduct which "involves substantial disorder or invasion of the rights of others is ... not immunized by the constitutional guarantee of freedom of speech." The legislature has the right to reasonably regulate the conduct of its citizens for the protection of society as a whole, even when that conduct is intertwined with expression and association.

Id. at 664, 188 N.W.2d at 452 (citations omitted). Accordingly, the conduct prohibited under the disorderly conduct statute does not abridge the constitutional liberty of free speech. ***Zwicker,*** 41 Wis.2d at 509, 164 N.W.2d at 518.

Here, the conduct for which Crawford was convicted was not protected under the First Amendment. The testimony presented showed that the police were called to the cathedral by a private citizen after Crawford refused to leave the cathedral grounds when told to do so. When the officers attempted to make him leave, he again refused and repeatedly yelled obscenities at the police officers and in general during the ten minutes before his arrest. This commotion caused onlookers to gather in a nearby park. This conduct fell under the proscriptions of the disorderly conduct statute, and therefore, Crawford's conviction did not violate the First Amendment.

Finally, Crawford argues that the trial court erroneously exercised its discretion when it allegedly sent the case back to the jury after it had accepted the verdict. This court concludes that the trial court properly exercised its discretion.

During deliberations, the jury sent the trial court several notes stating that the jurors were "hung" on the disorderly conduct charge. After each note, the trial court directed the jury to continue deliberating until they reached a verdict. Eventually, the trial court called the jurors into the court, and with the parties present, the court asked the foreperson if the jury could reach a verdict on the disorderly conduct charge. After a brief colloquy between the court and the foreperson of the jury, the court sent the jury back with the expectation that a written question would be forthcoming. The jury, however, continued to deliberate, did not forward a question to the court, and shortly thereafter, reached guilty verdicts on both counts.

Crawford argues that at the time the jury was called into the courtroom and the trial court and the parties became aware that the jury was having difficulty arriving at a verdict on the first count, the trial court had "accepted" the jury verdict. Therefore, the trial court should not have allowed the jury to go back and deliberate.

"A jury's verdict is not accepted until it is received in open court, the results announced, the jury polled, if requested, and the judgment entered." ***State v. Reid,*** 166 Wis.2d 139, 144, 479 N.W.2d 572, 574 (Ct. App. 1991). "Jurors are free to reconsider a verdict, even though they have reached agreement with regard to a particular charge ... so long as the verdict has not been accepted by the court." ***State v. Knight,*** 143 Wis.2d 408, 416, 421 N.W.2d 847, 850 (1988). Contrary to Crawford's contention, the trial court never accepted the jury verdict. Rather, the trial court instructed the jury to communicate by way of a written question. Accordingly, the trial court could allow the jury to go back and deliberate.

In sum, this court rejects all of Crawford's arguments and the judgments of conviction are affirmed.

By the Court.—Judgments affirmed.

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