COURT OF APPEALS
DECISION
DATED AND FILED

October 30, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0114-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHN W. MOORE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

EICH, C.J.[1] John W. Moore, appearing *pro se*, appeals from a judgment convicting him of misdemeanor bail jumping and disorderly conduct. His brief, which is at times difficult if not impossible to follow, includes a narrative which he does not in any way relate to the record, and attempts to raise

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

several arguments. Attached as an appendix to this opinion is the statement of issues from his brief.

The Dane County district attorney has attempted to group Moore's arguments into the following categories, and we can do no better:[2] (1) the trial court was prejudiced against Moore because he appeared without counsel; (2) the court "erred in failing to certify a question of law" to the supreme court; (3) the behavior that led to his conviction was protected speech under the First Amendment to the Constitution of the United States; (4) the criminal complaint failed to adequately allege jurisdiction and probable cause; (5) the State's charge of bail jumping violated his right not to be placed in jeopardy twice for the same offense; and (6) the court erred in denying his motion for a continuance.

Moore's argument that the trial court was prejudiced against him due to his *pro se* status is based on the court's simple—and entirely proper—question to him with respect to whether he was sure he wanted to proceed without an attorney. In that question, the court reminded Moore—who apparently had represented himself before the court in the past—that the fact that he had waived counsel in the past did not mean that he would be prohibited from asserting his right to counsel in the future. The court then asked Moore whether he had any objection to the court's treating him as having waived counsel at each hearing at which he appeared alone, and Moore replied: "I would have no objections, and I give commendation to the Court for its concern as to the possibility of a representation." We see no prejudice and no error in the court's action in this respect.

[2] We note in this regard that Moore has not filed a brief in reply to the State's arguments.

As to Moore's argument that the trial court improperly refused to "certify" questions of law to the supreme court, we see no error here, either. The trial court informed Moore not only that no certifiable legal question had been raised but that, under the law, the certification procedure, which is set forth in chapter 821, STATS., is confined to this court alone.

Moore's disorderly conduct conviction resulted from his creating a disturbance inside a convenience store, and he appears to argue that because he was a paying customer in the store, his conduct somehow was clothed with First Amendment protections. He was convicted for his illegal conduct, not for his "speech."

As to the complaint, it alleges that the offense occurred in the City of Madison, Dane County, Wisconsin, and it describes conduct on Moore's part which is more than sufficient to establish probable cause. With respect to the disorderly conduct charge, the complaint states that twenty other customers were in the store when Moore became "belligerent" and began "screaming and hollering and creating a disturbance," screaming loud enough "that the dispatcher could hear him over the telephone when [the storekeeper] called [the police]." As to the bail jumping charge, the complaint recites that at the time of these events, Moore was out on bail on two other disorderly conduct charges and that one of the conditions of his bail was that he not commit any crime. The complaint is sufficient to establish both jurisdiction and probable cause with respect to both charges.

As to Moore's double jeopardy claim, he was not charged twice for the same offense. He was, as indicated, charged with (and convicted of) bail jumping for violating a condition of his bond. And he has not suggested how his

conviction for the separate offense of disorderly conduct implicates the double jeopardy clause.

Finally, Moore argues that the trial court erred in denying his request for a continuance. Moore asked for a continuance of his trial in order "to submit police dispatcher tape as evidence and to produce expert witness." He claimed, "Volume exaggeration of the tape recording would show that the telephone volume controls were turned up to distort the actual volume of the events occurring at the store." He told the court that several experts at the Madison Area Technical College could test the tape for distortion, and he complained that the proprietor of the convenience store violated his civil rights by refusing to give him a paper or Styrofoam cup. He said he wanted to have "electronics experts come in here and deal with testimony on volume distortion.… [and] have a civil rights expert … come in here and testify as to the violations of the civil rights aspect."

The trial court denied Moore's request for a continuance, pointing out that he had the tape for several months and had made no showing that any of the "experts" would be able to offer material testimony. Finally, the court discussed the inconvenience that would be caused to the court, the prosecution and the witnesses by delaying the trial just as it was about to begin. The court's denial of Moore's last-minute request for a continuance was an appropriate exercise of discretion with which we will not interfere.

By the Court.—Judgment affirmed.

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

AN EXHIBIT HAS BEEN ATTACHED TO THIS OPINION. THE EXHIBIT CAN BE OBTAINED UNDER SEPARATE COVER BY CONTACTING THE WISCONSIN COURT OF APPEALS.

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