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DISTRICT II

March 14, 2018

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You are hereby notified that the Court has entered the following opinion and order:

2017AP1267-CR State of Wisconsin v. Samba Soumare (L.C. # 2016CF702)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Samba Soumare appeals from a judgment convicting him of multiple crimes. He challenges his conviction for uttering a forgery. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm the judgment of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

In May 2016, the State charged Soumare with uttering a forgery and attempted felony theft, both as a party to a crime. The charges stemmed from Soumare’s participation in a “black money scam,” in which Soumare and two others attempted to fraudulently obtain money from a man by persuading him that stacks of banknote-sized black construction paper were actually U.S. currency that had been covered in black coating to avoid detection by authorities. Soumare and his accomplices sought \$10,000 to assist them in “washing off” the black coating. The man alerted police to the scheme, and they subsequently arrested Soumare and his accomplices.

The matter proceeded to trial, where a jury convicted Soumare of both crimes. The circuit court sentenced him to a total of four years of initial confinement and three years of extended supervision. This appeal follows.

On appeal, Soumare challenges his conviction for uttering a forgery. He submits that the black construction paper cannot be considered a forged writing/object because it does not, on its face, look like genuine money. Accordingly, he maintains that the evidence was insufficient to convict him of uttering a forgery.

Soumare’s argument requires us to examine both the forgery statute and the evidence against him. Statutory interpretation is a question of law that we review de novo. *State v. Hemp*, 2014 WI 129, ¶12, 359 Wis. 2d 320, 856 N.W.2d 811. Likewise, the sufficiency of the evidence is a question of law that we review de novo. *State v. Smith*, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410.

We begin with the forgery statute. WISCONSIN STAT. § 943.38 provides in relevant part:

Forgery. (1) Whoever with intent to defraud falsely makes or alters a writing or object of any of the following kinds so that it

purports to have been made by another, or at another time, or with different provisions, or by authority of one who did not give such authority, is guilty of a Class H felony:

(a) A writing or object whereby legal rights or obligations are created, terminated or transferred, or any writing commonly relied upon in business or commercial transactions as evidence of debt or property rights....

....

(2) Whoever utters as genuine or possesses with intent to utter as false or as genuine any forged writing or object mentioned in sub. (1), knowing it to have been thus falsely made or altered, is guilty of a Class H felony.

There are four statutory elements of the offense of uttering a forgery under WIS. STAT. § 943.38(2): (1) the writing/object was one by which legal rights or obligations are created or transferred; (2) the writing/object was forged, that is, falsely made; (3) the defendant uttered the writing/object as genuine; and (4) the defendant knew the writing/object was falsely made. *See* WIS JI—CRIMINAL 1492; *State v. Entringer*, 2001 WI App 157, ¶8, 246 Wis.2d 839, 631 N.W.2d 651.

Here, we are satisfied that the evidence against Soumare met the above elements. First, the writing/object at issue (money) was one by which legal rights or obligations are created or transferred. Second, the writing/object was falsely made, as the black construction paper was cut to the size of banknotes. Third, Soumare and his accomplices uttered the writing/object as genuine, assuring the would-be victim that the black construction paper was actually U.S. currency covered in black coating. Finally, Soumare and his accomplices knew the writing/object was false. Indeed, upon their arrest, one of the accomplices stated, “[i]t’s a scam, it’s a scam, it’s all just a scam.”

Although Soumare suggests that the black construction paper needed to look more like genuine money to be considered a forged writing/object, his argument finds no support in the statute. Moreover, under such an interpretation, offenders could escape liability by simply being bad at forgery. We decline to interpret the forgery statute in a way that would require the addition of more words or lead to an unreasonable result. See *Westra v. State Farm Mut. Auto. Ins. Co.*, 2013 WI App 93, ¶18, 349 Wis. 2d 409, 835 N.W.2d 280 (courts may not add words to a statute when interpreting it); *DOJ v. DWD*, 2015 WI 114, ¶22, 365 Wis. 2d 694, 875 N.W.2d 545 (courts interpret statutory language reasonably to avoid unreasonable results).

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals