COURT OF APPEALS
DECISION
DATED AND FILED

February 5, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2323-CR **Cir. Ct. No. 99 CM 7908**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAN E. HOLMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEAN W. DiMOTTO, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.[1] Dan E. Holman appeals from a judgment entered after a jury found him guilty of bail jumping, contrary to WIS. STAT. § 946.49(1)(a) (1999-2000).[2] He claims that the bail condition imposed violated

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

[2] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

his constitutional right to free speech. Because the bail condition imposed a reasonable and necessary restriction, Holman's constitutional right to free speech was not violated and this court affirms.

I. BACKGROUND

¶2 In July 1998, Holman was charged with battery. He was released on a personal recognizance bond. Bail conditions included a no contact order, and required Holman to "have absolutely no contact whatsoever with … Donald Packard …." On July 31, 1999, police officer Randy Smith observed Holman yelling and screaming at Packard including, "'Donald Packard, you'll burn in hell'" and "'Don, you're going to be swimming in the fires of hell.'"

¶3 As a result of this contact, Holman was charged with bail jumping. He was convicted and now appeals.

II. DISCUSSION

¶4 Holman claims that the bail condition of having no contact with Packard infringed on his constitutional right to free speech. This court disagrees.

¶5 The conditions of bail are left to the discretion of the trial court. WIS. STAT. § 969.02. The trial court may impose restrictions on a defendant's "travel, association or place of abode," WIS. STAT. § 969.02(3)(b), as well as "any other condition deemed reasonably necessary to assure appearance … to protect members of the community from serious bodily harm or prevent intimidation of witnesses …." WIS. STAT. § 969.02(3)(d). Moreover, restrictions that impact on First Amendment freedoms must be narrowly proscribed so that legitimate speech will not be "chilled." ***State v. Braun***, 152 Wis. 2d 500, 511-13, 449 N.W.2d 851 (Ct. App. 1989).

¶6 Here, the "no contact" condition was reasonably necessary to protect a witness in the battery case—Packard. The statements at issue here certainly could be construed as "intimidation," and therefore were reasonably related to the legitimate purpose for the imposition of the bail condition—to prevent the intimidation of witnesses. Holman also argues that because he was twenty-five feet away from Packard when he made these statements, the violation was somehow nullified. This court disagrees. The no contact order was clear—*absolutely no contact whatsoever*. This court also rejects Holman's claim that he was engaging in political preaching and he cannot be held responsible simply because Packard happened to hear his comments. The comments were specifically directed to Packard *by name*, and were not generalized political protests.

¶7 Here, the restrictions on Holman's First Amendment rights were appropriate to protect victims and witnesses. ***Braun***, 152 Wis. 2d at 515. Therefore, this court concludes that the trial court did not erroneously exercise its discretion when it imposed the bail conditions. The bail conditions were narrowly tailored and reasonably necessary under the circumstances.

¶8 This court is not persuaded by Holman's argument that ***Braun*** and ***State v. Douglas D.***, 2001 WI 47, 243 Wis. 2d 204, 626 N.W.2d 725 require reversal of the judgment. In ***Braun***, this court held that the trial court's imposition of a 500-foot restriction violated the bail jumping statute and was too overbroad. ***Braun***, 152 Wis. 2d at 514. The restriction imposed on Holman was much narrower and was specifically tailored to contact with a particular witness, which is permitted by the bail jumping statute. In ***Douglas***, our supreme court held that the state cannot prosecute a student under the disorderly conduct statute for purely

written speech. ***Douglas***, 2001 WI 47, ¶3. That case is inapposite. It did not deal with conditions of bail, which is the subject of Holman's case.

By the Court.—Judgment affirmed.

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