COURT OF APPEALS
DECISION
DATED AND FILED

January 15, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1439-CR **Cir. Ct. No. 2010CM6353**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNEY WAYNE MADLOCK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Affirmed.*

¶1 FINE, J. Kenney Wayne Madlock appeals the judgment entered after a bench trial convicting him of knowingly violating a domestic-abuse injunction. *See* WIS. STAT. § 813.12(4) & (8). The injunction was sought by T.M., and was entered on May 18, 2010, when T.M. and Madlock were still

married. They were divorced about one week before the mid-June, 2011, bench trial.

¶2 As material, the injunction directed Madlock to "avoid the petitioner's [T.M.'s] residence," and was to "be effective until 5/18/14." (Uppercasing, bolding, and underlining omitted.). He claims that the evidence was insufficient to support the trial court's finding of guilt. We affirm.

I.

¶3 T.M. testified at the bench trial that on October 23, 2010, she was with Madlock's sister, with whom she was friends, sitting in the sister's car. The car was parked in front of T.M.'s house. At the time, she and Madlock were "in the process of getting divorced." T.M. told the trial court that she and the sister "were sitting in the car talking and I was going back in my home." After approximately ten minutes, she "was stepping out of her car when" she saw Madlock drive around the corner onto 16th Street, which ran in front of her house. She testified that Madlock was driving a "Ford Econoline truck" that he used although it was registered in her name. According to T.M., Madlock "actually went past the [sister's] car and stopped about a car length or so in front of his sister's car." "The truck stopped and he reversed it. Then he came to block his sister's parked car." She further explained on cross-examination: "He went past the car, her car. He stopped. He then put it in reverse and backed up. He blocked her car."

¶4 T.M. told the trial court that approximately "three or four minutes" had elapsed from the time she saw Madlock turn onto her street until he backed up to block his sister's car.

Q And during this time is there any eye contact being made?

A Yes.

Q And how far away are you from it?

A About 15 feet.

Q Fifteen feet? Is he in the car or out of the car?

A He was in the truck.

Q And are you in your [*sic*] car or out of the car?

A I was out of the car.

She went into her house and called the police. Madlock was gone by the time the police arrived some fifteen minutes later. T.M. told the trial court that the incident made her "[v]ery upset and nervous. I just couldn't sleep."

¶5 Madlock testified at the trial. Although he admitted driving on the street that ran past T.M.'s house, and also admitted that he saw T.M. standing near his sister's car when he turned onto the street, he denied stopping, making eye contact with her, or trying to harass her. He testified that he was merely trying to show a friend where he used to live.

¶6 Madlock told the trial court that he recognized that the injunction directed that he "avoid" T.M.'s house. Significantly, during re-direct examination by his trial lawyer, Madlock admitted that he would have violated the harassment injunction if he had stopped, as T.M. testified he did:

Q You just drove straight by?

A Just drove straight by minding my own business.

Q Did you think you were violating that order?

A No.

Q Do you think right now you violated that order?

A No.

Q What if you would have stopped?

A I would have violated.

Q If you would have like stared at her or parked or anything?

A I would have violated it then.

Q But you didn't do that?

A No.

Madlock said that T.M.'s testimony—as summarized by his trial lawyer—that he "stopped and parked there for a period of time and looked at her" was "not true."

¶7 The trial court found that T.M. was a credible witness and that Madlock's denials were not credible. Accordingly, as noted, it found Madlock guilty of violating the domestic-abuse injunction.

II.

¶8 As seen from Part I, this is a simple case, although the transcript is larded with much inconsequentia that the briefs discuss in distracting detail. The key issue is whether the trial court was justified in believing T.M.'s testimony; if it was, then, as Madlock admitted during the trial, he violated the injunction.

¶9 The scope of our review is severely limited by the reality that either a jury or a judge sitting as the trier of fact is better able to assess testimonial evidence than are we, limited as we are to a cold transcript:

> When reviewing the sufficiency of the evidence, we will reverse a conviction only if "the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said

> as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." Thus, an appellate court must "search the record to support the conclusion reached by the fact finder." [This] rule applies to court trials.

State v. Schulpius, 2006 WI App 263, ¶11, 298 Wis. 2d 155, 162–163, 726 N.W.2d 706, 709 (citations omitted). Madlock's appeal recognizes this:

> Credible evidence placed Mr. Madlock in a "truck," on 16th Street, *in front of* [T.M.]'s residence, on October 23, 2010. As Mr. Madlock drove down 16th Street, he saw [T.M.], stopped his truck, reversed it (remaining in the vehicle; on a public street), looked at [T.M.] (from an estimated distance of 15 feet), and drove away.

(Emphasis in original, Record references omitted.). Yet, immediately after this summary, Madlock's appellate brief asserts: "Considering these facts, Mr. Madlock asks this Court to find that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." We disagree.

¶10 Given T.M.'s testimony, which the trial court found credible, and Madlock's awareness that *had* he stopped in front of T.M.'s house, as T.M. testified he did, he *would have* violated the injunction, any contention that the evidence does not support the trial court's conclusion that he knowingly violated the injunction's direction to "avoid" T.M.'s "residence" borders on the frivolous. Further, given the trial court's findings, this case is not, as Madlock seems to contend, his merely driving on a public street past T.M.'s house—either inadvertently or unknowingly. The harassment order required that Madlock "avoid" T.M.'s house. He knowingly did not. Accordingly, we affirm.

By the Court.—Judgment affirmed.

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