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**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT IV**

January 7, 2014

To:

Hon. William E. Hanrahan  
Circuit Court Judge  
215 South Hamilton, Br. 7, Rm. 4103  
Madison, WI 53703

Carlo Esqueda  
Clerk of Circuit Court  
215 South Hamilton, Room 1000  
Madison, WI 53703

Sarah Burgundy  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Matthew Moeser  
Asst. District Attorney  
Dane County District Attorneys Office  
215 South Hamilton, Room 3000  
Madison, WI 53703

James E. Grant 368173  
Oshkosh Corr. Inst.  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

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2012AP2362-CR

State of Wisconsin v. James E. Grant (L.C. # 2010CF1896)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

James Grant appeals pro se a judgment convicting him of felony bail-jumping, following a jury trial. Grant contends that the evidence was insufficient to establish Grant violated the terms of his bond by committing the crime of possession of drug paraphernalia. 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(1) (2011-12).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Grant was charged with possession of drug paraphernalia and felony bail-jumping based on a police search that revealed a syringe, alcohol wipes, a tourniquet, and small cotton filters in Grant's possession. The State dismissed the possession of drug paraphernalia charge, and the felony bail-jumping charge proceeded to a bench trial. The circuit court found Grant guilty of felony bail-jumping.

A conviction for bail-jumping requires evidence that the defendant, while released on bail, intentionally failed to comply with a term of his bond. WIS. STAT. § 946.49. Here, the State alleged that Grant failed to comply with his bond by committing a new crime, that is, possession of drug paraphernalia. Grant does not contest that if the evidence is sufficient to support a bail jumping charge, the felony-level charge applies. *See* § 946.49(1)(b).

Grant argues that the evidence at trial was insufficient to support a finding that Grant committed the underlying offense of possession of drug paraphernalia. Specifically, Grant argues that the items found by police in Grant's possession—a syringe, alcohol wipes, a tourniquet, and small cotton filters—were not “drug paraphernalia.” Rather, Grant contends, those items were “medical paraphernalia.” Grant argues that the items cannot be considered “drug paraphernalia” absent drug residue or admission of illegal use. Grant also points out that a syringe is specifically excluded from the definition of “drug paraphernalia” under WIS. STAT. § 961.571(1)(b), and contends that there are non-drug-related purposes for alcohol wipes, tourniquets, and cotton balls.

We review the sufficiency of the evidence for whether “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.” *State v.*

*Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). We conclude that the evidence at trial was sufficient to support the conviction of felony bail-jumping based on the underlying conduct of possession of drug paraphernalia.

It is a criminal offense to “posses with the primary intent to use[] drug paraphernalia to ... inject ... into the human body a controlled substance ....” WIS. STAT. § 961.573(1). “Drug paraphernalia” is “all equipment, products and material of any kind that are used, designed for use or primarily intended for use in ... injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance ....” WIS. STAT. § 961.571(1)(a).

At Grant’s bench trial for felony bail-jumping, the State presented testimony by Madison Police Officer Matthew Magolan. Magolan testified to the following. Grant consented to a search during a traffic stop. Grant had a syringe in his pocket, which was missing the needle. Grant stated that the syringe belonged to his diabetic sister, but refused to give Magolan information regarding his sister to allow Magolan to verify that story. A search of Grant’s jacket in the backseat of the car revealed a tourniquet, alcohol swabs, and tiny cotton balls. Magolan knew from his experience as a Madison police officer that Madison needle exchange programs distribute “drug kits” containing syringes, tourniquets, cotton balls, and alcohol wipes. Magolan also knew from his training and experience as a police officer that those items are commonly used for the purpose of injecting intravenous drugs such as heroin. Magolan also was unaware of the use of a tourniquet for the treatment of diabetes. After Magolan discovered the items, Grant stated to Magolan that Grant would “beat any charge” Magolan issued against Grant, and Grant also threatened Magolan’s job. Grant offered no other basis for possessing the items.

Magolan's testimony was sufficient to support a finding that the tourniquet, alcohol swabs, and cotton balls were "equipment, products [or] material ... that are used ... in ... injecting ... into the human body a controlled substance," and thus were "drug paraphernalia." *See* WIS. STAT. § 961.571(1)(a). Further, the testimony was sufficient to support a finding that Grant possessed the drug paraphernalia with the primary intent to inject a controlled substance into his body. The testimony established that tourniquets, alcohol swabs, and tiny cotton balls are all used for the purpose of injecting intravenous drugs such as heroin, and that they are supplied in a complete "drug kit" by Madison needle exchange programs. Additionally, the presence of the syringe, while itself not drug paraphernalia under § 961.571(1)(b), supported the finding that the other items were used for purposes of injecting heroin. Finally, the finding of drug paraphernalia was further supported by the fact that Grant's only explanation for the syringe was that it belonged to Grant's diabetic sister, yet Grant refused to provide any contact information for his sister; the lack of any indication a tourniquet would be used by a diabetic; and Grant's angry response and threats to Magolan when the items were located. Contrary to Grant's assertions, there is no requirement that the items contain drug residue or that Grant admit illegal use of the items in order for the items to be considered drug paraphernalia.

Because the evidence supported a finding that the items in Grant's possession were items used in injecting a controlled substance into the human body, and that Grant intended to use them for that purpose, we have no basis to disturb the conviction.<sup>2</sup>

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<sup>2</sup> To the extent Grant's briefs attempt to raise other issues, we deem those issues insufficiently briefed to warrant a response. *See State v. Petit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*