OFFICE OF THE CLERK
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

DISTRICT II

September 19, 2018

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Michael D. Graveley
District Attorney
912 56th St.
Kenosha, WI 53140-3747

Dustin C. Haskell
Assistant State Public Defender
735 N. Water St., Rm. 912
Milwaukee, WI 53203

Katherine Desmond Lloyd
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Victoria Bak-Gogan
6215 94th Ct.
Kenosha, WI 53142

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

2017AP1705-CR	State of Wisconsin v. Victoria Bak-Gogan	(L.C. # 2013CM482)
2017AP1706-CR	State of Wisconsin v. Victoria Bak-Gogan	(L.C. # 2013CM836)
2017AP1707-CR	State of Wisconsin v. Victoria Bak-Gogan	(L.C. # 2013CM1443)
2017AP1708-CR	State of Wisconsin v. Victoria Bak-Gogan	(L.C. # 2013CM1657)
2017AP1709-CR	State of Wisconsin v. Victoria Bak-Gogan	(L.C. # 2014CF1102)
2017AP1710-CR	State of Wisconsin v. Victoria Bak-Gogan	(L.C. # 2014CM1602)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

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).

Victoria Bak-Gogan appeals from the circuit court's judgments of conviction on twelve counts across six cases. Based on our review of the briefs and record, we conclude at conference

that these cases are appropriate for summary disposition. *See* WIS. STAT. § 809.21 (2015-16).[1] We affirm.

In September 2015, Bak-Gogan was convicted by a jury on four counts of violating a harassment injunction, seven counts of misdemeanor bail jumping, and one count of stalking. The underlying charges arose from Bak-Gogan's pattern of harassing two of her neighbors.

In these consolidated appeals, Bak-Gogan first claims that there was insufficient evidence to convict her of two of the offenses—one count of violating a harassment injunction and one count of bail jumping. In determining whether the evidence was sufficient to support a conviction, this court "may not substitute its judgment for that of the trier of fact unless 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. Hayes***, 2004 WI 80, ¶56, 273 Wis. 2d 1, 681 N.W.2d 203 (citation omitted). Under this narrow review, we give great deference to the determination of the trier of fact and examine the record to find facts that support upholding the decision to convict. ***Id.***, ¶57.

Bak-Gogan's conviction for violating a harassment injunction required the State to prove that (1) an injunction had been issued under WIS. STAT. § 813.125, (2) she committed an act that violated the terms of the injunction, and (3) she knew that the injunction had been issued and that her acts violated its terms. WIS JI—CRIMINAL 2040. Bak-Gogan does not dispute the existence

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

of an injunction that prohibited her from coming within 1000 feet of one of her neighbor's residence, nor does she contest that evidence showed she violated that term by driving past the residence. Instead, before this court, Bak-Gogan contends solely that that evidence was insufficient to prove her violation was knowingly committed. This theory is without merit.

Bak-Gogan does not assert that she lacked knowledge of either the injunction or that her actions constituted a violation of its terms. Rather, she claims that those terms should be "interpreted flexibly" as "perfect compliance" with them would have been "practically impossible" due to the proximity of her neighbor's residence to her own. The injunction, she insists, "could not reasonably be construed to prevent [her] from driving on public streets in an ordinary fashion to exit the small subdivision." Moreover, "[n]o reasonable jury could find" that "simply driving through her own neighborhood" violated the injunction.

To the contrary, of course a reasonable jury could so find, and plenty of evidence supports the notion that she knew she had to stay 1000 feet away but failed to comply anyway. We agree with the State that this argument is not really a challenge to the sufficiency of the evidence; it is an effort to dispute the reasonableness of the terms of the underlying injunction. But the validity of the terms of the injunction may not be challenged under this procedural posture. *See* ***State v. Bouzek***, 168 Wis. 2d 642, 643-45, 484 N.W.2d 362 (Ct. App. 1992)

(holding defendant could not collaterally attack the validity of an underlying injunction in a subsequent criminal prosecution for its violation).[2]

Bak-Gogan's challenge to her bail jumping conviction similarly fails. For that charge, the State was required to prove that (1) Bak-Gogan was charged with a misdemeanor, (2) she was released from custody on bond, and (3) she intentionally failed to comply with the terms of the bond. WIS JI—CRIMINAL 1795. Bak-Gogan again disputes only the third element, this time contending that her violation of a bond term prohibiting her from coming within 1000 feet of her neighbors' residences was not intentional because her actions were merely "benign, incidental proximity." But again, we see no way to argue that the evidence was insufficient to show that Bak-Gogan violated the terms of her bond. The jury had plentiful reasons to reject Bak-Gogan's contention that her actions were somehow unintentional, and, like above, the validity of the underlying court order is not a subject of this appeal. *See* ***State v. Campbell***, 2006 WI 99, ¶¶81-82, 294 Wis. 2d 100, 718 N.W.2d 649 (holding defendant was properly prevented from collaterally attacking order underlying bail jumping conviction).

[2] Bak-Gogan also cites ***Brandmiller v. Arreola***, 199 Wis. 2d 528, 539-40, 544 N.W.2d 894 (1996), in an undeveloped argument regarding the constitutional right to travel. While acknowledging that this right can be subject to reasonable limits, Bak-Gogan asserts that "those limits cannot be construed to prevent [her] from driving normally on a public road." She does not, however, suggest that the injunction or conviction were somehow unconstitutional. Therefore, to the extent that this argument reaches beyond her impermissible collateral attack, we will not consider it further. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (explaining undeveloped arguments do not need to be entertained).

We conclude that the evidence was sufficient to support jury verdicts, beyond a reasonable doubt, that Bak-Gogan was guilty of violating a harassment injunction and bail jumping.

Bak-Gogan also contends that the circuit court erred by denying her motion for mistrial after an investigating detective testified that he had asked to be removed from Bak-Gogan's case because, "despite trying to focus in on just investigating criminal activity, [he], too, was receiving voicemails at work." When the circuit court asked her to explain how she was prejudiced, Bak-Gogan replied, "[The testimony] is extremely prejudicial," and stated that the detective's involvement was irrelevant to her case. The court denied the motion because no particular prejudice had been shown.

The decision to grant or deny a mistrial is within the circuit court's discretion. ***State v. Givens***, 217 Wis. 2d 180, 191, 580 N.W.2d 340 (Ct. App. 1998). That decision requires the court to determine, in light of the entire proceeding, whether the basis for the motion is sufficiently prejudicial to warrant a new trial. ***Id.*** In the absence of structural error, the court must decide whether the defendant can receive a fair trial. ***State v. Ford***, 2007 WI 138, ¶29, 306 Wis. 2d 1, 742 N.W.2d 61. We will reverse the denial of a motion for mistrial only on a clear showing of erroneous use of discretion. ***Id.***

Even if the testimony was improperly heard by the jury, Bak-Gogan has not demonstrated that the court erred when it concluded that admission of this testimony prevented her from receiving a fair trial. At most, the disputed testimony constituted a single, brief error that was minimal in comparison to other evidence presented at trial. The State withdrew the question and

discontinued the line of questioning. The court even offered to provide a curative instruction upon request—an invitation Bak-Gogan did not accept. Likewise, Bak-Gogan did not request that the testimony be struck. In short, even if it was error to allow this testimony, the circuit court was well within its discretion to conclude that a mistrial was not the appropriate remedy.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are 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