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DISTRICT III

January 28, 2025

To:

Hon. William F. Kussel Jr.
Circuit Court Judge
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

Delsy Kakwitch
Clerk of Circuit Court
Menominee County Courthouse
Electronic Notice

Laura Nelson
Electronic Notice

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

2022AP1847-CR

State of Wisconsin v. Paul J. Kleczka (L. C. No. 2020CM1)

Before Gill, J.¹

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).

Paul J. Kleczka appeals from a judgment convicting him of misdemeanor bail jumping. On appeal, he argues that the circuit court erroneously exercised its discretion when it made two evidentiary decisions, which are discussed below. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm the judgment of conviction.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The State charged Kleczka with one count of misdemeanor bail jumping based on allegations that Kleczka violated the absolute sobriety condition of his bond in Menominee County case No. 2019CM1 in June 2019.

The matter eventually proceeded to a jury trial. The State introduced Kleczka's signed bond form from Menominee County case No. 2019CM1, dated February 2019. The form included a section titled, "Additional Conditions of Release," and, underneath that title it stated, "absolute sobriety." The Menominee County Clerk of Court, Delsy Kakwitch, confirmed the contents of the form by reading the relevant portions to the jury, and the circuit court admitted the form into evidence. Kakwitch also testified that none of the minutes sheets from Kleczka's other hearings in Menominee County case No. 2019CM1 included reference to a motion to modify Kleczka's bond.

On cross-examination, Kleczka's trial counsel asked Kakwitch, "And so you don't know if Mr. Kleczka read [the bond] form when he signed it, right?" The State objected, and a sidebar was held. The court reporter included portions of the sidebar in the transcript of the trial; however, parts of the sidebar are labeled as "indiscernible." The transcribed portions of the sidebar show that the State objected to trial counsel's question on relevancy grounds, and the circuit court said, "I will sustain (indiscernible)." The transcript shows that the sidebar then ended. Afterward, and with the jury present, the court stated, "Okay. Counsel may re-ask the question that I have already ruled on." Trial counsel then asked, "Do you have any knowledge that Mr. Kleczka read this form?" Kakwitch responded that she did not know whether Kleczka had read the bond form before signing it. Afterward, trial counsel asked, "Do you have any knowledge that anyone read this form to Mr. Kleczka?" Kakwitch answered, "I was not in court that day, no." Trial counsel subsequently asked whether Kakwitch had any knowledge "about Mr. Kleczka's literacy or ability to read," to which she responded, "No." The parties never placed the contents of the sidebar on the record.

Deputy Justin Hoffman of the Menominee County Sheriff's Department testified that he was dispatched to Kleczka's location in June 2019 because Kleczka claimed that someone had stolen his firearm from his vehicle. Hoffman testified that upon making contact with Kleczka, he noticed that Kleczka was unsteady on his feet, had slow and slurred speech and red and glossy eyes, and emitted a strong odor of intoxicants. Hoffman later took Kleczka to the hospital for a blood draw, after learning that he was released on bond with a condition of absolute sobriety. The results of the blood draw showed that Kleczka had a blood alcohol concentration (BAC) of 0.182 g/100mL.

The State then asked Deputy Hoffman if he knew "what the legal limit for intoxication is in Wisconsin." Kleczka's trial counsel objected on relevancy grounds, and a sidebar was held. The circuit court overruled the objection, and Hoffman answered that the "legal limit" for intoxication is 0.08 g/100mL. The jury ultimately found Kleczka guilty, and he now appeals.

On appeal, Kleczka raises two arguments regarding the circuit court's evidentiary rulings. We will "not disturb a circuit court's decision to admit or exclude evidence unless the circuit court erroneously exercised its discretion." *State v. Jackson*, 2014 WI 4, ¶43, 352 Wis. 2d 249, 841 N.W.2d 791 (citation omitted). "A circuit court erroneously exercises its discretion if it applies an improper legal standard or makes a decision not reasonably supported by the facts of record." *Id.* (citation omitted).

First, Kleczka argues that the circuit court erroneously exercised its discretion by sustaining the State's objection to his trial counsel's question to Kakwitsch about whether she knew if Kleczka had read the bond form before signing it. Kleczka appears to assume that the court sustained the State's objection to his trial counsel's question. Kleczka concedes, however, that following the sidebar, his trial counsel was permitted to ask Kakwitsch essentially the same question to which the State had objected, as well as two additional questions concerning Kakwitsch's knowledge as to whether anyone else read the bond form to Kleczka, and whether

she had any knowledge “about Mr. Kleczka’s literacy or ability to read.” Despite his concession, Kleczka contends that there remains the “issue of whether the court’s stated ruling was correct and within its discretion” under WIS. STAT. § 906.02.

Kleczka’s argument that the circuit court erred by sustaining the State’s objection is not supported by the record. Based on the jury trial transcript, it appears that the court actually overruled the State’s objection to his trial counsel’s question. Following the sidebar, the court stated, “Counsel may re-ask the question that I have already ruled on.” However, even if the court sustained the State’s objection, trial counsel was permitted to ask, essentially, the same question to Kakwitch. In addition, trial counsel was allowed to ask Kakwitch two follow-up questions that were apparently intended to cast doubt on whether Kleczka had knowledge of the absolute sobriety provision located in the bond form. Kleczka’s argument is, therefore, without merit. Further, to the extent there was an error, it was harmless because Kleczka’s substantial rights were not affected—trial counsel was able to ask Kakwitch a virtually identical question following the court’s ruling as was asked prior to the State’s objection. *See* WIS. STAT. § 805.18.

Second, Kleczka argues that the circuit court erroneously exercised its discretion by permitting Deputy Hoffman to testify about the “legal limit” for intoxication in Wisconsin. Kleczka argues that Hoffman’s answer was irrelevant and confused the jury because the “legal limit” to which Hoffman was referring was a reference to the general standard for operating a motor vehicle while intoxicated or with a prohibited alcohol concentration.

We conclude that any error the circuit court made in overruling trial counsel’s objection was harmless. As Kleczka states on appeal, there was undisputed evidence before the jury that he admitted to consuming alcohol on the night in question, so his “lack of sobriety was not an issue.” Rather, the defense argued that Kleczka did not know that the bond condition was still in effect in June 2019. *See* WIS JI—CRIMINAL 1795 (2018). Moreover, at most, the State’s question and Hoffman’s answer suggested that the State needed to prove beyond a reasonable

doubt that Kleczka's BAC was 0.08 or higher—not that it was higher than zero. In short, Kleczka's substantial rights were not affected by the court admitting information regarding a higher BAC standard into evidence. *See* WIS. STAT. § 805.18.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals