COURT OF APPEALS
DECISION
DATED AND RELEASED

November 27, 1996

No. 96-1419-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHANDLER D. HALL
a/k/a CHANDLER D. HARRIS,

Defendants-Appellants.

APPEAL from a judgment and an order of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Affirmed*.

DEININGER, J.[1] Chandler Hall appeals a judgment convicting him of impersonating a peace officer and an order for his release pending appeal which requires him to comply with all conditions set forth by the Department of Corrections (DOC). He raises two issues: 1) whether the evidence was sufficient to support his conviction; and 2) whether the trial court erroneously exercised its discretion by requiring Hall to comply with all

[1] This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

conditions set by the DOC during his release pending appeal. We conclude that the evidence was sufficient and that the trial court properly exercised its discretion in setting release conditions. Accordingly, we affirm.

BACKGROUND

On October 20, 1994, Hall was let into the home of Sandra Bauhs by a friend of Bauhs', Peter Connor. After ascertaining that neither of them knew Hall, they asked Hall to leave. Hall replied "No, I don't have to go anywhere. I'm a police officer." When Bauhs asked for identification, Hall responded, "I don't have to show you any ID. I'm a police officer. Why don't you show me some ID. Which one of you lives here?" When Bauhs picked up her phone to call the police, Hall took the phone from her, stated "No, I'll call the police," dialed a number and spoke into the phone. Soon after, Hall left, taking Bauhs' cordless telephone. At trial, Hall admitted to being at Bauhs' home, but denied that he claimed to be a police officer.

The State charged Hall with impersonating a peace officer under § 946.70(1), STATS., a misdemeanor, and theft under § 943.20(3)(a), STATS., also a misdemeanor. A jury found Hall guilty on both counts.[2] At sentencing, Hall moved the trial court for release pending appeal. Hall was then in the custody of the DOC on a separate conviction. The trial court granted Hall's motion and imposed two conditions: 1) that Hall "comply with all conditions of probation and/or parole and/or Intensive Sanctions and/or anything else that may be set by the Department of Corrections," and 2) Hall must make all future court appearances. The order was later modified to provide that Hall comply "with all conditions set forth by the Department of Corrections."

ANALYSIS

Sufficiency of the Evidence

[2] The jury also returned not guilty verdicts on two counts of resisting an officer. The impersonating count was originally charged as a felony under § 946.70(2), STATS., but was reduced to a misdemeanor before trial.

Hall argues that his statements claiming to be a police officer to Connor and Bauhs are not sufficient to sustain a conviction in light of the other evidence.

The jury is the sole arbiter of the credibility of witnesses' testimony and the weight and sufficiency of the evidence. ***State v. Webster***, 196 Wis.2d 308, 320, 538 N.W.2d 810, 815 (Ct. App. 1995). We may not overturn a jury verdict based on the sufficiency of the evidence unless "`the evidence, considered most favorably to the conviction, is so insufficient in probative value and force that no trier of fact acting reasonably could be convinced beyond a reasonable doubt that the elements of the charged crime have been proven.'" ***State v. Dawson***, 195 Wis.2d 161, 172, 536 N.W.2d 119, 123 (Ct. App. 1995) (quoted source omitted).

Section 946.70(1), STATS., states: "[W]hoever impersonates a peace officer with intent to mislead others into believing that the person is actually a peace officer is guilty of a Class A misdemeanor." Hall argues that a jury could not reasonably find him guilty of impersonating a police officer because to "impersonate" means "pretend to be" and his statements that he was a police officer, standing alone, do not show he was pretending to be a police officer.

We agree that one meaning of "impersonate" is "pretend to be." *See* WIS J I—CRIMINAL 1830; and WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1133 (1993). We reject Hall's argument, however. Both Hall and the State requested that WIS J I—CRIMINAL 1830 be given. The version of that instruction submitted by the State and given by the court without objection from Hall included the following:

> The first element of this offense requires that the defendant impersonated a peace officer. To "impersonate" means to represent oneself to be another person without authority to do so. One may impersonate another by verbal declarations as well as by obvious physical impersonations as in wearing a badge or a uniform.

If the "pretend to be" alternative in WIS J I—CRIMINAL 1830 was important to Hall's theory of defense, he should have requested it at the instructions conference. He did not do so. We thus review the record to determine whether the jury reasonably found guilt under the instructions it received, as opposed to under an alternative which Hall may now wish had been given.

The testimony indicated that Hall entered the house of two strangers and demanded to know who they were and which one of the two lived there. When challenged, he twice responded that he was a police officer. He then prevented one of the residents from phoning the police to verify his claim. The jury, if it believed Bauhs' and Connor's testimony, could have reasonably found that Hall had represented himself to be a police officer based on his verbal declarations.

Hall next argues that the evidence does not support a finding that he intended to deceive Connor and Bauhs because his verbal claim of being a police officer, without more, is not sufficient to constitute intent. Under § 939.23(4), STATS., the words "with intent to" in a statute mean that "the actor ... has a purpose to do the thing or cause the result specified." Intent "`can be evidenced ... by words or conduct of the person who is claimed to have entertained it.'" ***State v. Hess***, 99 Wis.2d 22, 29, 298 N.W.2d 111, 114 (Ct. App. 1980) (quoted source omitted). We conclude that the jury could reasonably find that by claiming to be a police officer, and by his conduct at the time, Hall had the purpose to mislead Connor and Bauhs into believing he was a police officer.

Finally, Hall contends that he cannot be found guilty under the statute because 1) his actions, clothes and demeanor were inconsistent with that of a police officer, and 2) neither Connor nor Bauhs apparently believed him when he claimed to be a police officer. Section 946.70(1), STATS., requires only that Hall intended to mislead, not proof that he successfully misled others into believing that he was a police officer. Federal courts have reached a similar conclusion regarding federal statutes prohibiting the impersonation of an officer. *See* ***United States v. Bushrod***, 763 F.2d 1051, 1053-54 (9th Cir. 1985); ***Pierce v. United States***, 86 F.2d 949, 951-52 (6th Cir. 1936).

Thus, neither Hall's clothes and demeanor nor the victims' apparent skepticism regarding his statements is evidence which would render

the jury's verdict unreasonable. A convincing performance is not necessary for conviction under § 946.70(1), STATS.

Conditions of Release

Hall argues that the trial court erroneously exercised its discretion by "essentially declin[ing] to exercise discretion" when it ordered him to comply with all conditions set by the DOC. *See* ***McCleary v. State***, 49 Wis.2d 263, 278, 182 N.W.2d 512, 520 (1971) (failure to exercise discretion constitutes abuse of discretion).

"Persons released on bail are subject to a number of conditions that are generally left to the trial court's discretion." ***State v. Braun***, 152 Wis.2d 500, 511, 449 N.W.2d 851, 856 (Ct. App. 1989). We will uphold a trial court's discretionary decision where the court considered the facts of the case and reasoned its way to a conclusion that is one a reasonable judge could reach and consistent with applicable law. ***Burkes v. Hales***, 165 Wis.2d 585, 590, 478 N.W.2d 37, 39 (Ct. App. 1991).

Section 969.01(2)(b), STATS., provides that a trial court shall release a defendant convicted of a misdemeanor on bond pending appeal. Under §§ 969.01(4) and 969.02(3) the trial court may set reasonable conditions of release to insure the defendant's appearance in court, protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

At the time of sentencing, Hall was in the custody of DOC serving a sentence on an unrelated conviction. The State raised a concern regarding a previous incident in which Hall had "go[ne] AWOL while on field supervision." The trial court concluded that it was bound to release Hall under § 969.01(2)(b), STATS., and that it could not order monetary bond because of Hall's indigency. *See* ***State v. Lipke***, 186 Wis.2d 358, 366, 521 N.W.2d 444, 447 (Ct. App. 1994). The trial court ordered, as a condition of Hall's release pending appeal, that he comply with all conditions set by DOC for his probation or parole on the existing sentence.

We conclude that the trial court properly exercised its discretion. The court applied the relevant law to the facts, including Hall's history and his

current status, and came to a decision a reasonable judge could reach. We cannot conclude that it is unreasonable, as a condition of release pending appeal, that a defendant comply with rules of supervision which may be in effect as a result of his or her status on other convictions. *See* § 969.02(3)(a), STATS., (court may condition release of misdemeanant by placement in custody of designated organization for supervision).

By the Court.—Judgment and order affirmed.

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