

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 11, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-0728-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SEAN M. SIMPSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS R. COOPER, Judge. *Affirmed.*

FINE, J. Sean Michael James Simpson appeals, *pro se*, from a judgment convicting him, following a bench trial, of disorderly conduct. See § 947.01, STATS.¹ Although, as the State points out, Simpson's brief is difficult to

¹ Section 947.01, STATS., provides:

Disorderly conduct. Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under

(continued)

follow, he appears to be asserting the following: he claims that he was incompetent at the time he was arrested on a bench warrant and, therefore, was immune from arrest; he claims that there was insufficient evidence presented at the bench trial to convict him; he claims that the bench warrant on which he was arrested was invalid because the bench-warrant form was not signed by an assistant district attorney; he claims that there were court appearances during which he was not represented by counsel. We affirm.

1. *Alleged incompetency at the time of arrest.* Simpson claims that he was incompetent when he was arrested on a bench warrant on February 2, 1996. In support, he points to a January 31, 1995, determination by a Milwaukee County Probate Court Commissioner that Simpson was “incompetent to make a personal decision to accept or reject psychotropic drugs under sec. 51.61(1)(g), Stats., and Jones v. Gerhardstein 141 Wis. 2d 710 (1987).” Simpson's competency to stand trial in this case was raised by his attorney at the return on the bench warrant. The trial court ordered an evaluation. *See* § 971.14, STATS. The examining psychologist submitted a report, which opined that Simpson was competent to go to trial. Simpson did not contest the report's conclusion that he was competent to stand trial, and the trial court so found.

Whether Simpson was competent or incompetent when he was arrested is immaterial to the legality of his arrest. Indeed, § 971.14, STATS., which establishes the procedure for determining whether a defendant is competent to stand trial, would largely be a nullity if those who were incompetent were immune from arrest. There is nothing in the law or logic that supports Simpson's claim that incompetent persons are immune from arrest.

circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

2. *Sufficiency of the evidence.* Simpson used to work at a Hardee's restaurant. He contended that the restaurant owed him money. He went to the restaurant to complain. Although Simpson denied creating a disturbance at the restaurant, restaurant employees testified to the contrary. The trial court found that Simpson trespassed on an area in the restaurant that was not open to the public, and that, although he was a former employee, he had no right to be there. This, the trial court concluded from the evidence, created a disturbance and violated § 947.01, STATS. Accordingly, the trial court found Simpson guilty as charged.

Given the trial court's superior position to discern nuances from oral testimony, its findings of fact will not be overturned unless they are clearly erroneous. RULE 805.17(2), STATS. The trial court's finding that Simpson violated § 947.01, STATS., is not, by any stretch of the imagination, clearly erroneous.

3. *Bench Warrant.* The bench warrant was issued when Simpson did not appear for a scheduled pretrial hearing. Although not in the appellate record transmitted to this court, Simpson has attached the bench warrant as part of his appendix. We may not consider matters not contained in the appellate record. *Jenkins v. Sabourin*, 104 Wis.2d 309, 313–314, 311 N.W.2d 600, 603 (1981). Nevertheless, Simpson has provided to us a copy of the bench warrant, and the State does not contend that the copy is not accurate. Contrary to Simpson's contention, the warrant is not defective. The place on the form calling for a signature of an assistant district attorney, which Simpson notes correctly was not signed, is, by its terms, to be signed when extradition of the fugitive is sought. Simpson was arrested by the Milwaukee County Sheriff and was not extradited. Simpson's contention that the warrant was defective is without merit.

4. *Representation by counsel.* Simpson claims that the trial court conducted certain proceedings without the presence of Simpson's lawyer. The first such proceeding was on June 20, 1995, when the trial court was told that Simpson did not qualify for representation by the office of the State Public Defender. A lawyer from that office, however, was present—designated on the transcript as a “friend to the court.” The trial court did not take any substantive action that date, but, rather, adjourned the proceeding for an indigency hearing. The next such proceeding was on November 17, 1995, when Simpson did not appear for a pretrial hearing. The trial court issued the bench warrant discussed in part 3, above. Return on the bench warrant was held on February 3, 1996, one day after Simpson was arrested. He appeared with counsel on that date and on every date thereafter. Simpson's right to counsel was not violated.

By the Court.—Judgment affirmed.

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

