

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 29, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1943-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

OSCAR JASPER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dodge County: ANDREW P. BISSONNETTE, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. Oscar Jasper appeals from judgments convicting him of one count of battery and three counts of bail jumping, and from an order denying his motion for postconviction relief. He claims that venue for the bail jumping charges should have been in the county where bail was set and the trial

court lacked subject matter jurisdiction over him due to alleged deficiencies in the preliminary hearing. We conclude, however, venue was properly assumed in the county where the battery which formed the basis for the bail jumping charges occurred, and that any errors at the preliminary hearing were cured by the subsequent convictions. Accordingly, we affirm.

¶2 Jasper was arrested for beating his girlfriend in Dodge County while he was out on bond awaiting trial on battery and burglary charges in Dane County. The police photographed the girlfriend's injuries and confiscated a riding whip, which she said had been used in the assault. The State charged Jasper in Dodge County with one count of misdemeanor battery and three counts of felony bail jumping. At the preliminary hearing, the girlfriend recanted her accusations.

¶3 The trial court initially refused to bind Jasper over for trial because it believed the State had failed to establish probable cause for the felony bail jumpings on the question whether the bond conditions were still in effect at the time of the battery. On reconsideration, however, the trial court concluded there was sufficient evidence to show probable cause that Jasper had committed a felony battery, even though that crime had not been charged by the State, and it allowed the case to proceed without dismissing any charges. The State then filed an information alleging felony battery in addition to the three counts of bail jumping.

¶4 Jasper moved for an additional preliminary hearing on the felony battery charge and asked venue on the bail jumping charges be changed to Dane County. After the trial court denied the motions, the parties agreed that the trial would be limited to the battery charge and that the trial court would enter guilty verdicts on the bail jumping charges if Jasper were convicted on the battery charge

and would enter not guilty verdicts on the bail jumpings if Jasper were found not guilty of the battery.

¶5 The jury found Jasper guilty of misdemeanor, rather than felony, battery, and the trial court sentenced Jasper to three consecutive three-year prison terms on the bail jumpings and imposed and stayed a ninety-day jail term on the battery charge, subject to a three-year term of probation consecutive to the bail jumping sentences. Jasper moved to vacate the judgments of conviction on the grounds that he was improperly bound over for trial, which he contended deprived the court of subject matter jurisdiction. The trial court denied the motion and Jasper appeals, renewing his venue and jurisdictional claims.

¶6 WISCONSIN STAT. § 971.19(2)¹ provides that “[w]here 2 or more acts are requisite to the commission of any offense, the trial may be in any county in which any of such acts occurred.” The determination of the proper venue for an action is a question of law, which we review de novo. *Irby v. Young*, 139 Wis. 2d 279, 281, 407 N.W.2d 314 (Ct. App. 1987). Jasper argues that Dane County was the proper venue for the bail jumping charges because that is where the bond conditions were set. We are satisfied, however, that the battery which Jasper committed in Dodge County was an act requisite to the commission of the bail jumpings. In this respect, we reject Jasper’s argument that he did not “commit” a crime in Dodge County (thereby violating his bond conditions) until he was convicted of the battery charge in that county. The battery was “committed” at the time and place the beating occurred. The subsequent conviction merely provided the State with evidence of the commission of the crime. Therefore, Dodge County

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

was a proper venue, and we need not address Jasper's additional claim that the trial court lacked personal jurisdiction due to proper venue.

¶7 Jasper next argues the trial court lacked subject matter jurisdiction over the felony battery charge because the State did not allege that offense in the initial complaint and he never had a preliminary hearing focusing on that charge. *See* WIS. STAT. §§ 968.02(1) and 971.02(1). We agree with the State, however, that the trial court was not limited to considering whether the defendant had committed the specific felonies charged in the complaint. *See State v. Burke*, 153 Wis. 2d 445, 456, 451 N.W.2d 739 (1990). The State presented evidence regarding the battery in order to support its allegation that Jasper had violated his bond conditions. The trial court was entitled to rely upon that evidence to find probable cause that Jasper had probably committed a felony. If Jasper felt there was an insufficient transactional relationship between the felonies charged and that on which he was bound over for trial, he should have challenged the bindover determination and preserved the issue by means of an interlocutory appeal. *State v. Wolverton*, 193 Wis. 2d 234, 254, 533 N.W.2d 167 (1995).

¶8 Jasper also asserts the trial court should have dismissed the bail jumping charges because the State failed to establish probable cause at the preliminary hearing that he had committed those offenses. *See* WIS. STAT. § 970.03(10) (in multiple count complaints, the court shall dismiss any count for which it finds there is no probable cause, and no information may be filed based upon the facts supporting the dismissed offense). Again, however, Jasper failed to petition for interlocutory review of this issue, and, instead, proceeded to stipulate that the trial court could enter guilty verdicts on the bail jumping charges if the jury convicted him of battery. The acknowledgement implicit in the stipulation that the State had enough evidence to convict on the bail jumping charges

remedied any omission in the State's presentation of evidence at the preliminary hearing. *State v. Webb*, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991), *cert. denied* (a valid conviction cures any defects in the preliminary hearing).

By the Court.—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

