COURT OF APPEALS
DECISION
DATED AND FILED

August 12, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2699-CR
02-2700-CR
02-2701-CR

Cir. Ct. No. 97-CF-255
99-CF-301
00-CF-23

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GARY E. WATERS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Gary Waters appeals judgments convicting him of sexually assaulting his stepdaughters and bail jumping. The trial court vacated two other bail jumping convictions. Waters argues that the bail jumping charges should not have been tried in Marathon County and that he is entitled to a sentence

modification hearing based on the trial court vacating the two counts. He also argues that the court improperly exercised its discretion in five evidentiary matters relating to the sexual assault convictions. We reject these arguments and affirm the judgments and the order denying postconviction relief.

¶2 The bail jumping charges were properly filed in Marathon County even though the illegal contact occurred in Clark County. A crime may be prosecuted in any county where an act requisite to the commission of the offense occurs. *See* WIS. STAT. § 971.19(2).[1] Waters argues that the requisite act must be an act of the defendant and not the judge who set bail. That argument fails for two reasons. First, his release on bond was not solely a function of the judge's ruling granting bail. Waters also signed bail bond forms in Marathon County acknowledging the conditions of his release on recognizance. Second, Waters' construction of the statute would lead to an absurd result. A defendant who violates the conditions of his bond out of state could not be prosecuted if Waters' interpretation were accepted. We conclude that any violation of the conditions of release on bail can be tried in the county in which bail was imposed.

¶3 Citing ***State v. Hauk***, 2002 WI App 226, ¶¶42-43, 257 Wis. 2d 579, 652 N.W.2d 393, Waters argues that he is entitled to a hearing on a motion to modify his sentences based on the trial court's decision to vacate two of the bail jumping convictions for which concurrent sentences were imposed. In ***Hauk***, the court of appeals reversed a conviction and remanded for the trial court to decide whether to reduce the sentences imposed for other convictions based on the

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

reversal. Here, the trial court vacated the convictions. Therefore, it has already had the opportunity to modify the sentences if it believed modification was warranted. ***Hauk*** does not hold that vacating other concurrent sentences compels any modification and does not require any hearing on a matter that the trial court has already considered.

¶4 Waters challenges five evidentiary rulings relating to the sexual assault convictions. First, he argues that the trial court improperly exercised its discretion when it allowed a physician to testify that the condition of one of the victim's hymen was consistent with her allegations. Waters argues that the court violated the rule set out in ***State v. Haseltine***, 120 Wis. 2d 92, 96, 352 N.W.2d 673 (Ct. App. 1984), by allowing the doctor to express an opinion on the victim's veracity. In ***Haseltine***, a psychiatrist opined that the complainant was an incest victim. Here, the doctor merely testified that the victim's physical condition was consistent with her allegations. While the questions and the doctor's answers assumed certain facts to be true, the doctor did not vouch for the victim's veracity. The doctor's observations that the victim's condition was consistent with the timing and nature of the assaults she described are admissible. *See* ***State v. Ross***, 203 Wis. 2d 66, 81-82, 552 N.W.2d 428 (Ct. App. 1996).

¶5 Citing ***State v. Jensen***, 147 Wis. 2d 240, 250-58, 432 N.W.2d 913 (1988), Waters argues that a social worker was improperly allowed to testify about the behavior of the victims and their mother. Waters argues that the social worker's testimony expressed or implied the social worker's belief in the truthfulness of the allegations. We disagree. The social worker's testimony assumed that certain facts were true, such as the victims not immediately reporting the assaults, continuing to have contact with Waters, wanting the case to be "done

with," and Waters giving them gifts. The social worker opined that these behaviors were commonplace in sexual abuse cases. As allowed in ***Jensen***, the social worker rebutted misconceptions about the presumed behavior of sexual assault victims. ***Id.*** at 252. The fairest reading of the social worker's testimony is not that she believed the victims. Rather, she offered opinions based on what she had been told about the assaults and the parties, and she explained why that type of attitude and behavior was consistent with other sexual assault cases. A comparison of a specific victim's behavior to that of victims of the same type of crime is permitted. *See* ***State v. Huntington***, 216 Wis. 2d 671, 697, 575 N.W.2d 268 (1998).

¶6 Waters next argues that the court improperly exercised its discretion when it allowed the prosecutor to introduce photographs of the victims taken near the times of the assaults. Waters argues that the photos were irrelevant and were introduced to "ignite the emotions of the jurors." The trial court reasoned that the photographs may assist the jury in determining whether one would be willing to have sexual relations with someone of that age. The court noted that the crimes involved an element that the sexual contact occurred for the purpose of sexual gratification, making the victims' appearance relevant. That decision is not wholly unreasonable. *See* ***State v. Lindvig***, 205 Wis. 2d 100, 108, 555 N.W.2d 197 (Ct. App. 1996). While the photographs have limited probative value, they also have little prejudicial effect. They were not inflammatory or inherently prejudicial. The record discloses no basis for believing that the jurors' emotions would be affected by the photographs.

¶7 Waters also argues that the court improperly admitted a poem written by one of the victims in which she chastises an unidentified man for taking

her virginity. Waters objected to admission of the poem on relevancy grounds because the record did not show that the victim wrote the poem. The victim then testified that she did write the poem. Waters did not pursue any other aspect of the poem's relevancy. Therefore, no other argument regarding the poem's relevancy was properly preserved for appeal. Waters also argues on appeal that the poem should have been excluded as hearsay. He did not make a hearsay objection at trial, and that issue is waived. In addition, the trial court explained at the postconviction hearing that the poem was admissible as a prior consistent statement as allowed by WIS. STAT. § 908.01(4)(a). Waters does not challenge that conclusion on appeal.

¶8 Finally, Waters argues that the trial court violated his due process rights and his right to confront witnesses by limiting cross-examination about a complainant's criminal record. Waters now contends that one of the victims was convicted of two crimes that were not expunged. The trial court did not limit the inquiry. At the hearing regarding the number of convictions, defense counsel informed the court that one of the victims had two convictions. The State responded that one of the convictions appeared to have been expunged. Defense counsel asked the prosecutor to concede that the victim could testify that she had been convicted of one crime. The prosecutor agreed with defense counsel's request. We will not review invited error. *See* ***Atkinson v. Mentzel***, 211 Wis. 2d 628, 642-43, 566 N.W.2d 158 (Ct. App. 1997).

By the Court.—Judgments and order affirmed.

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