COURT OF APPEALS
DECISION
DATED AND FILED

October 11, 2017

Diane M. Fremgen
Clerk of Court of Appeals

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.

Appeal No. 2016AP1887 **Cir. Ct. No. 2015CV467**

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

CITY OF NEW RICHMOND,

PLAINTIFF-RESPONDENT,

V.

WARREN WAYNE SLOCUM,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for St. Croix County: EDWARD F. VLACK III, Judge. *Affirmed*.

¶1 HRUZ, J.[1] Warren Slocum, pro se, appeals a judgment entered on a disorderly conduct citation and an order denying reconsideration. We affirm.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

BACKGROUND

¶2 Slocum's disorderly conduct citation stemmed from an attempt to serve legal process on Town of Star Prairie clerk-treasurer Michael Burke at his personal residence. During the evening hours of January 29, 2015, Slocum allegedly rang Burke's doorbell incessantly, shook the door handle repeatedly, and walked around the house peering in windows. Burke's wife believed someone was attempting to break into the residence and called 911.

¶3 Based on the events of January 29, 2015, Slocum was found guilty of disorderly conduct after a municipal trial, and he appealed to the St. Croix County Circuit Court. A de novo bench trial was held during which several witnesses testified, and photographs were submitted into evidence showing door damage and footprints in the snow outside of Burke's daughter's window. The court imposed a $212.20 forfeiture. A motion to reconsider was denied, and Slocum now appeals.

DISCUSSION

¶4 Slocum first argues the circuit court improperly denied him a jury trial. Slocum contends he requested a jury trial in his appeal from the municipal court. He further contends that after the case was re-assigned in the circuit court, "the local judge ignored the previous judge's approval of the case as a jury trial."

¶5 Slocum misapprehends the record. The Honorable Michael Waterman signed findings of fact and an order concerning Slocum's circuit court petition for waiver of fees and costs. Judge Waterman's order specifically stated, "The action may be commenced without payment of filing fees. The sheriff shall serve all necessary documents without payment of service fees." Subsequently,

the case was transferred to the Honorable Edward Vlack, whose judicial assistant sent correspondence to Slocum stating:

> The Petition for Waiver of Fees and Costs—Affidavit of Indigency and Order that you filed is only for filing fees. You may be required to pay the fees at a later date.
>
> In regard to your request to have jury fees waived, Judge Vlack will only consider an original Petition for Waiver of Fees and Costs (not a fax or photocopy). You may file that with the Clerk of Court's office.

¶6 At the final pretrial conference, there was a discussion concerning whether the trial would be to the court or a jury. Judge Vlack referenced the correspondence from his judicial assistant, again reiterating that the letter stated Slocum's petition for waiver of fees "was only for a waiver of filing fees," and "[i]f you wanted to have a waiver of the jury fee, you had to submit an original request."

¶7 On the morning of trial on April 26, 2016, the circuit court again addressed the issue of whether the matter would be a bench or jury trial. Judge Vlack stated: "This is the time set for trial. The record should reflect that we had a pretrial on April 18th. One of the questions regarding this is if this was trial to the Court or a Jury and it was my determination … that there had never been a jury fee paid or a cost petition."

¶8 The following exchange then occurred:

> THE COURT: The file reflects that on October 6th [2015] there was a letter sent to you by Nancy Bierbrauer, the Judicial Assistant, copy to Ms. Bannink, stating that the Petition of Waiver for Fees that you filed was only filing fees. Second paragraph said quote, in regard to request to have jury fees waived, Judge Vlack will only consider an original Petition for Waiver of Fees and Costs, not a fax or photocopy. You may file that with the Clerk of Court's office, end of quote.

MR. SLOCUM: Well I just filed an original.

THE COURT: And that's untimely.

¶9 Accordingly, the record establishes that Judge Waterman did not approve the case as a jury trial. Furthermore, Slocum failed to produce evidence that he filed an original petition for waiver of jury fees prior to the morning of trial.[2] The circuit court properly determined the petition for waiver of jury fee submitted on the day of trial was untimely.

¶10 Slocum also argues the circuit court improperly engaged in "an inequitable constriction of evidence and testimony" during the trial. As best we can discern, Slocum contends the court allowed into evidence exhibits—such as the photographs of the damaged door implying attempted forcible entry, and the footprints in the snow—which Slocum asserts were "fabricated well after the incident itself." However, these allegations go to the weight rather than admissibility of the evidence, as Mrs. Burke testified that prior to the evening of January 29, there was no damage to the door or footprints in the snow. Slocum also makes unsupported assertions that other evidence should have been admitted that "would have identified and explained the actual context and circumstances of the case." Slocum fails to indicate how this purported evidence was relevant to

[2] Although Slocum alleged on the morning of trial that he did not receive the judicial assistant's correspondence, he never alleged denial of receipt either at the pretrial conference when the jury trial issue was discussed, or in his initial brief to this court. We therefore deem the issue abandoned. *See* ***Reiman Assocs., Inc. v. R/A Advert., Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981); ***Northwest Wholesale Lumber v. Anderson***, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502 (Ct. App. 1995). In any event, Slocum failed to rebut the presumption of receipt of mailing. *See* ***Olson v. Sentry Ins. Co.***, 38 Wis. 2d 175, 181, 156 N.W.2d 429 (1968).

the issue of whether he engaged in disorderly conduct on January 29, 2015.[3] In any event, a circuit court's ruling on relevance will be reversed only for an erroneous exercise of discretion. ***State v. Pharr***, 115 Wis. 2d 334, 344-45, 340 N.W.2d 498 (1983). The record indicates the circuit court properly exercised its discretion in concluding the purported evidence was irrelevant.

¶11 Slocum also argues the City failed to prove the elements for disorderly conduct. However, our task as a reviewing court is limited to determining whether the evidence presented could have convinced a trier of fact, acting reasonably, that the appropriate burden of proof had been met on each element of the offense. ***City of Milwaukee v. Wilson***, 96 Wis. 2d 11, 21, 291 N.W.2d 452 (1980). Slocum's arguments in this regard are limited, misdirected and unavailing. He insists disorderly conduct "is not defined by a victim's hypersensitive response to appropriate, socially-appropriate behavior." *See, e.g.*, ***State v. Zwicker***, 41 Wis. 2d 497, 508, 164 N.W.2d 512 (1969). Slocum contends the "local judge is ignoring the fact that there is a 'hypercritical individual' involved in this case, who believed that ringing a doorbell equates with an attempt to forcefully break into her home, when simple, orderly, civil process was instead being properly and responsibly engaged in." He also asserts "the statutes allow for just such process service at a personal residence, when an office is closed," and there are "no designated hours of the day for these services to occur …."

[3] The "Statement of The Case" section of Slocum's brief to this court refers to several factual allegations concerning police threatening Slocum with arrest if additional attempts were made to perform service of process, and police refusing to perform service of process that Slocum claims "I'd subsequently paid them to perform." However, other than citing these alleged facts, Slocum's "Argument" section fails to contain a developed argument that the circuit court improperly excluded these alleged facts.

¶12 Slocum's characterization of the evidence is belied by the record, which shows more than a ringing of the doorbell and "simple, orderly civil process." Mrs. Burke testified at trial that on the evening of January 29, her husband was already in bed "not feeling well." At approximately 8:00-8:30 p.m., she was preparing for bed when "the doorbell started ringing," and then "our little dog started viciously barking" toward the window in her daughter's bedroom. She further testified, "[S]o the doorbell rang, pounding on the door, jiggling the doorknob and I'm like, 'Okay. This is just very, very strange.' … And so I was just kind of spooked. It is scary for me."

¶13 Mrs. Burke further testified that "about 10:00, um, I'm on the phone actually with my other daughter and, ah, the same thing. All of a sudden, the doorbell started ringing. The pounding on the door …." When asked under cross-examination to "point out what manner you found particularly offensive," Mrs. Burke stated as follows: "Ringing the doorbell, the pounding on the door, the jiggling of my doorknob, the constant ringing—ding, ding, ding, ding, ding, ding, ding. That is excessive. The pounding on the door, the going around the home, peeking in the window in the background, aggressive behavior …."

¶14 Mrs. Burke also characterized Slocum's behavior as "unreasonably loud … noisy, violent, riotous, abusive, indecent, profane, boisterous." She testified, "I was very scared. Terrified, actually." Photographs taken the next morning were introduced into evidence showing a wood strip from the front door on the ground, and footprints in the snow outside her daughter's bedroom window.

¶15 The 911 recording was also presented at trial. Mrs. Burke told the dispatcher she felt someone was trying to get into the house. The dispatcher acknowledged hearing the doorbell ringing during the call, which Mrs. Burke

described as "constant." When asked by the dispatcher if she had a description of the person outside, Mrs. Burke stated she was too scared to go to the door.

¶16 Based upon the evidence at trial, the circuit court found:

> Mr. Slocum acknowledged that he was attempting to serve process on Michael Burke at his personal residence at 10:00 p.m. on January 29, 2015. According to Ms. Burke, Mr. Slocum repetitively rang the Burke[s'] doorbell, Mr. Burke was asleep at the time, while Ms. Burke was awake. According to the testimony, Mr. Slocum shook the handle of the door and walked around the house peering in windows. Ms. Burke eventually called 911, believing someone was trying to break into the house. At trial, photographs were submitted that showed damage to the door as well as foot prints outside the home.

¶17 The circuit court held:

> While action of serving process is not in and of itself unlawful, the manner one uses to serve process can subject one to legal consequences. In this case, in summary, it was late in the evening, dark out, and the actions of Mr. Slocum clearly disturbed and frightened Ms. Burke.

¶18 Nevertheless, Slocum argues, "Ms. Burke's testimony is full of inconsistencies, contradictions, and absurdities." He asserts "[n]either of those claims (or others like banging on the door) were mentioned in the initial complaints to police, or in the 911 call, so their credibility is an issue …."

¶19 However, it is well established that witness credibility is the province of the factfinder, not this court. *See* ***Estate of Dejmal v. Merta***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). We pay proper deference to the circuit court's assessment of the weight and credibility of the evidence and uphold factual findings unless clearly erroneous. WIS. STAT. § 805.17(2). We search the record for evidence to support the findings the circuit court reached, not for evidence to support findings the court could have made but did not. ***Dejmal***, 95

Wis. 2d at 154. When more than one inference can be drawn from the credible evidence, we must accept the inference found by the circuit court as finder of fact. ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345.

¶20 Here, the circuit court's factual findings and credibility determinations are supported by the record. We agree with the court's common-sense observation that service of process must be done in a manner that is not disorderly. Slocum violated the municipal ordinance by engaging in disorderly behavior, "which tends to cause or provoke an immediate disturbance of public order or tends to annoy or disturb any other person." Accordingly, we affirm the judgment.

¶21 Finally, we note Slocum's briefs to this court fail to conform to the requirements of the rules of appellate practice. We have noted such rules violations in past appeals involving Slocum. It should be apparent to Slocum at this point that he must provide citation to the record on appeal for each statement and factual proposition made in his briefs. *See* WIS. STAT. RULES 809.19(1)(c), (d), and (e). This court will not consider facts outside the record, and we will not search the record for evidence to support a party's arguments. ***Stuart v. Weisflog's Showroom Gallery, Inc.***, 2006 WI App 109, ¶36, 293 Wis. 2d 668, 721 N.W.2d 127. Slocum's appendix is also deficient and fails to include the required portions of the record. *See* WIS. STAT. RULE 809.19(2)(a). Slocum is admonished that future rules violations may result in sanctions.

By the Court.—Judgment and order affirmed.

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