COURT OF APPEALS
DECISION
DATED AND RELEASED

April 30, 1996

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.

NOTICE

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

No. 95-3456

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LOUIS M. ANDERSON,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed*.

SULLIVAN, J. Louis Anderson appeals from a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant—third offense, and operating a motor vehicle with a prohibited alcohol concentration of 0.08% or more. He also appeals from an order denying his motion for postconviction relief. The only issue he raises on appeal is whether the trial court erred by failing to instruct the jury on the defense of coercion. This court concludes that the trial court properly declined to give the coercion instruction because there was no reasonable basis in the evidence to support it. Accordingly, the judgment and order are affirmed.

I. BACKGROUND.

City of Milwaukee Police Officers Scott Beaver and Laurence Mueller observed a pick-up truck squealing its tires as it left a tavern parking lot. The police pursued the truck and detained it and its occupant. Both officers later testified that Louis Anderson was the sole occupant and driver of the truck. The officers detected the strong odor of alcohol on Anderson's breath and then arrested him after he failed several field sobriety tests.

At trial, Anderson testified that his girlfriend, Marianna Arredondo, was the driver of the truck and that he was sitting in the middle seat of the truck. He maintained that when Arredondo stopped the truck she exited the vehicle and walked away from it. He further testified that because of Arredondo's erratic driving, he turned off the truck's ignition and put the keys into his pocket. He testified that he turned the ignition off and took the keys because Arredondo's erratic driving caused him to fear for his life. Finally, Anderson testified that he then exited the truck just as the officers approached it and they assumed he was the driver.

Arredondo testified that she drove the truck and that she exited it and left the scene after she pulled the truck to the side of the road. She testified that Anderson never drove the truck that night.

Yessie Yager testified for Anderson. She stated that Anderson left the tavern with Arredondo and that Arredondo was driving the truck. She testified that she saw the police stop the truck and saw Arredondo exit the truck and leave the scene.

Anderson then requested a jury instruction on the defense of coercion. He argued that while technically he was operating the truck when he turned the ignition off and assisted Arredondo in pulling the truck to the roadside, he only did it because of a fear for his own safety. Indeed, he argues that his act was a result of his belief that turning off the truck's ignition was the only means by which imminent death or great bodily harm to them could be avoided. The trial court declined to give the coercion instruction and the jury convicted Anderson.

II. ANALYSIS.

A trial court has wide discretion in presenting instructions to a jury and this court will not reverse such a determination absent an erroneous exercise of discretion. ***State v. Morgan,*** 195 Wis.2d 388, 448, 536 N.W.2d 425, 448 (Ct. App. 1995). While defendants are entitled to an instruction on a valid theory of defense, they are not entitled to an instruction that merely highlights evidentiary factors. ***Id***. (citation omitted). Thus a trial court is justified in declining to give a requested instruction in a criminal case if it is not reasonably required by the evidence. *See* ***State v. Bjerkaas,*** 163 Wis.2d 949, 954, 472 N.W.2d 615, 617 (Ct. App. 1991). On appeal, this court must view the evidence in the most favorable light it would reasonably admit from the standpoint of the accused. ***State v. Stoehr,*** 134 Wis.2d 66, 87, 396 N.W.2d 177, 185 (1986) (citation omitted).

"The law allows the defendant to act under the defense of coercion only if a threat by another person ... caused the defendant to believe that his act was the only means of preventing ... imminent death or great bodily harm to himself (or to others) ... and which pressure caused him to act as he did." WIS J I—CRIMINAL 790; *see* § 939.46, STATS. Further, the defendant's beliefs must have been reasonable and the reasonableness of the defendant's beliefs "must be determined from the standpoint of the defendant at the time of his acts." WIS J I—CRIMINAL 790.

Even viewing the evidence most favorable to Anderson, there is no reasonable basis in the evidence to show that Anderson acted under a belief that his actions were necessary to prevent imminent death or great bodily harm to either himself or Arredondo. Nowhere in the evidence is there *any* reasonable support for an argument that Anderson considered himself in danger of *imminent* death or *great bodily* harm. Further, in his appellate brief he points to no evidence which would support such a view of the evidence. His argument is merely a general statement that he believed that turning off the truck was the only means by which imminent death or great bodily harm would be avoided. This court concludes that the trial court did not erroneously exercise its discretion.

By the Court.—Judgment and order affirmed.

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