

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 6, 1997

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. 96-0448-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TONY M. TURNER,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Sauk County: PATRICK TAGGART, Judge. *Affirmed.*

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

PER CURIAM. Tony M. Turner appeals from a judgment of conviction and an order denying his postconviction motion. The issue is whether the circuit court erred in admitting evidence of a prior conviction. We affirm.

Turner was charged in 1991 with three counts of first-degree sexual assault of a child committed in May 1991. A jury convicted Turner on all counts. We affirmed the conviction on count two, but reversed as to counts one and three. Turner now appeals from his conviction on those counts after a new trial.

Turner argues that the trial court erred by allowing the State to introduce evidence of his conviction on count two. That count charged Turner with sexual assault of S.T. Count one also charged him with assault of S.T., while count three similarly charged him with respect to M.M.G. Turner moved in limine to exclude evidence of the prior conviction. The court denied the motion.

On appeal, Turner does not argue that the evidence is barred by § 904.04(2), STATS., which limits admission of evidence of other acts. He argues only that the evidence should have been excluded under § 904.03, STATS., because its probative value is substantially outweighed by the danger of unfair prejudice. Specifically, he argues that because the jury in the first trial would not have been able to consider its decision to convict on one count when considering other counts, it is unfair to allow the jury to do so on retrial of counts one and three.

Turner is correct that the jury in his first trial could not have used guilt on one count to infer guilt on other counts. *See* WIS J I—CRIMINAL 484.¹ However, as Turner appears to concede, prior case law has already established that in a case such as this the jury can consider, as relevant to his motive or intent, similar acts for which the defendant was previously convicted. Following the holding of those cases, it is logical to conclude that a jury considering a multiple-count information can similarly use its finding of guilt on one count when considering the other counts, notwithstanding WIS J I—CRIMINAL 484. Turner cites no authority to the contrary. Therefore, we reject his argument that the jury at his first trial would have been barred from considering a conviction on count two in the same way it was considered by the

¹ The instruction provides in relevant part: "Each count charges a separate crime, and you must consider each one separately. Your verdict for the crime charged in one count must not affect your verdict on any other count."

jury in the second trial. It was not unfair to allow the earlier conviction to be used in the second trial.

By the Court. – Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.