

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 15, 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. 96-1490-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANTWAN BATTLES,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: DIANE S. SYKES, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Antwan Battles appeals from a judgment entered after a jury convicted him of felony murder, party to a crime, contrary to §§ 943.32(1)(a) & (2), 940.03, 939.05 and 939.32, STATS. He claims that: (1) the trial court erred in refusing to instruct the jury on the defense of coercion; (2) the trial court erroneously exercised its discretion when it admitted into evidence and

published to the jury a photograph of the murdered victim; and (3) the trial court erroneously exercised its discretion by refusing to redact from Battles's statement a vulgar reference to sexual intercourse before sending the statement to the jury. Because the trial court did not err in declining to give the coercion instruction, and because the trial court did not erroneously exercise its discretion in deciding the challenged evidentiary rulings, we affirm.

## **I. BACKGROUND**

Two days before victim Rodney Haydon was killed, Clifton Frier and Ralph Harris, while at Battles's home, asked Battles for information about Haydon. Battles responded that he would not provide the information because Battles knew Harris would use the information to rob Haydon.

On the night of the murder, Harris and Frier enlisted Battles to help them rob Haydon. They asked Battles to telephone Haydon to arrange a drug purchase at Haydon's house because Battles had purchased drugs from Haydon in the past. Harris and Frier planned to rob Haydon after Battles lured Haydon out of the house.

Battles made the telephone call to arrange the meeting. Harris and Frier left for fifteen minutes and returned with guns. Frier loaded one of the guns in front of Battles. Battles claims that he went along with the plan because he feared the two men would kill Haydon or Haydon's family if Battles was not present to keep the situation under control.

Battles drove Harris and Frier to Haydon's house. Battles dropped the two off in a nearby alley and proceeded to Haydon's residence. As planned, Battles lured Haydon outside, where Harris and Frier robbed him and shot at him.

Haydon was hit in the head. He managed to get back inside the house, where he collapsed and died. Battles left, got the car, and picked up Harris and Frier. Battles was later arrested, charged and convicted. He now appeals.

## II. DISCUSSION

### A. *Coercion Defense Instruction.*

Battles claims that the trial court erred in refusing to give a coercion instruction. His theory of defense was that he was coerced into committing the crime and therefore was not responsible. The trial court refused to give the instruction ruling that:

That instruction and defense requires, and I'm quoting from instruction 790 at this time, .... "Coercion is a defense to a criminal liability if a threat by another person, other than the defendant's co-conspirator, causes the defendant reasonably to believe his act is the only means of preventing imminent death or great bodily harm to himself or others and causes the defendant to so act." And we just don't have that type of situation here. We have no evidence of a threat by another person other than the defendant's co-conspirator which would have given rise to such belief on the part of the defendant that his actions were the only means of preventing imminent death or great bodily harm to himself or another. We just don't have those facts in this case, so the coercion defense is not appropriate here and I will not be giving 790, the coercion instruction, to the jury in this case.

A trial court has wide discretion in deciding which instructions to give a jury. *See State v. Lenarchick*, 74 Wis.2d 425, 455, 247 N.W.2d 80, 96 (1976). The trial court determines whether the evidence supports a requested instruction. *See State v. Stoehr*, 134 Wis.2d 66, 87, 396 N.W.2d 177, 185 (1986). Battles is not automatically entitled to a jury instruction on a proffered defense. *See id.* He has the burden of producing evidence to establish the coercion defense

before the trial court is required to give the instruction. *See id.*; *see also Moes v. State*, 91 Wis.2d 756, 765, 284 N.W.2d 66, 70 (1979). The trial court determined that Battles did not satisfy this burden. We agree.

Battles emphasizes that the trial court did not let the jury determine whether the threat of coercion was made by a co-conspirator. Regardless, the record demonstrates that Battles's attempt to prove coercion was woefully inadequate, and, even if a jury could have concluded that the threat was not made by a co-conspirator, the trial court's ruling was correct for other reasons; therefore, we must affirm. *See State v. Holt*, 128 Wis.2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985).

The defense of coercion is set forth in § 939.46, STATS.:

A threat by a person other than the actor's coconspirator which causes the actor reasonably to believe that his or her act is the only means of preventing imminent death or great bodily harm to the actor or another and which causes him or her so to act is a defense to a prosecution for any crime based on that act, except that if the prosecution is for first-degree intentional homicide, the degree of the crime is reduced to 2nd-degree intentional homicide.

Although Battles failed to prove several elements of the coercion defense, the most obvious is the requirement that the person being coerced must have a reasonable belief that committing the act was the only means of preventing the threatened death or great bodily harm. Battles knew about Harris and Frier's plan two days before it actually occurred. He could have warned Haydon. He could have notified the police. He had the same opportunity to do either of these during the fifteen minutes that Harris and Frier left the room for their guns. Further, Harris and Frier got out of the car before Battles arrived at Haydon's home. Battles could have driven away. He could have driven to the police station.

He could have warned Haydon when Haydon opened the door to his home. He could have called the police from Haydon's phone instead of or before luring him outside. Any of these alternatives provides a more reasonable means of preventing the harm than simply going along with the armed robbery plan with the hope that by being present he might have been able to prevent Harris and Frier from harming Haydon or his family. Because this element of the coercion defense was not met, the evidence did not support giving the instruction, and the trial court was correct in declining to do so.

*B. Admission of Photograph.*

Battles next claims that the trial court erroneously exercised its discretion in admitting and publishing to the jury a police photo taken of Haydon's body sometime after he died. In reviewing the trial court's evidentiary rulings related to admitting photographs, our standard of review is limited. We will not reverse the trial court's discretionary "decision unless it appears that, in light of the record as a whole, [the trial court's] conclusion was wholly unreasonable or if the circumstances indicate that the only purpose of the photographs was to inflame or prejudice the jury." *Hayzes v. State*, 64 Wis.2d 189, 200, 218 N.W.2d 717, 723 (1974). Because the trial court's ruling here was not wholly unreasonable and because the circumstances do not demonstrate that the purpose of the photo was to inflame or prejudice the jury, we affirm the trial court's decision.

The trial court admitted the photo to allow the jury to evaluate the two versions of the events. Battles claimed he did not know how seriously injured Haydon was, and that is the reason he gave for leaving the scene of the crime. The State argued that Battles was totally uncaring about Haydon so as to defeat Battles's defense theory of "going along" with Harris and Frier in order to protect

Haydon from harm. The State claimed that the photo depicting the body shortly after death would disprove Battles's contention that he did not know that Haydon was seriously injured. The purpose of admitting the photo, therefore, was to allow the jury to assess the credibility of these differing positions. It was not admitted for the purpose of inflaming or prejudicing the jury. Given these two separate versions, we cannot say that the trial court's decision to admit the photo was wholly unreasonable. We are not persuaded by Battles's contention that it was unreasonable to admit the photo because it was taken sometime after he left the scene and, therefore, does not accurately depict Haydon as Battles would have viewed him immediately after Haydon was shot. This argument goes to the weight of the evidence, not to the question of admissibility. Battles was free to make this argument to the jury. Nevertheless, in examining the photo the jury could discount the aspects of Haydon's condition attributable to the passage of time and reasonably draw conclusions regarding the nature of the wound at the time it was inflicted. Therefore, the trial court did not erroneously exercise its discretion in admitting the photo.

*C. Admission of Battles's Vulgar Reference in his Statement.*

Battles also claims that the trial court erroneously admitted a portion of his statement in which he stated that he and a woman named Stephanie "used to fuck each other." Battles claims that the trial court should have redacted this portion of his statement because it unduly prejudiced him by suggesting to the jury that he had the character trait of making derogatory statements about women. Our review is limited to determining whether the trial court erroneously exercised its discretion in admitting this portion of Battles's statement. See *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983). We conclude that Battles's

contention is without merit and that the trial court did not erroneously exercise its discretion in admitting the statement.

Although we acknowledge that jurors may have viewed this language as vulgar, we are not convinced that the statement suggests that Battles has a derogatory attitude towards women. The form of the statement clearly illustrates a mutual sexual relationship—what was done was done to “each other.” Further, the statement concluded with the explanation that now Battles and Stephanie are “just friends.” Given these facts, we cannot conclude that the trial court’s failure to redact this portion of the statement was unduly prejudicial to Battles, and, therefore, the trial court did not erroneously exercise discretion in admitting it.

*By the Court.*—Judgment affirmed.

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

