

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

April 29, 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.

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

Nos. 96-3066-CR
96-3067-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RICHARD BOHO,

DEFENDANT-APPELLANT.

APPEAL from judgments and orders of the circuit court for Ashland County: ROBERT E. EATON, Judge. *Affirmed.*

MYSE, J. In this consolidated appeal, Richard Boho appeals a judgment of conviction for disorderly conduct and battery to Janice Stanley and his conviction for bail jumping for violating the “no contact” condition of his bail. Boho contends that the trial court erroneously excluded from evidence a letter written by the victim, Stanley, to Boho, which he claims was relevant to his theory of self-defense. In addition, Boho contends that there is no factual basis to sustain the conviction for bail jumping because a phone call from fifty miles away that did

not involve threats made to the victim is not a violation of the court-imposed “no contact” provision between Boho and the victim. Because this court concludes that the trial court did not err by excluding the letter and that Boho’s phone call to the victim violated the “no contact” provision, the judgments of conviction are affirmed.

The standard of review for the exclusion of evidence is well settled. “A trial court’s decision to admit or exclude evidence is a discretionary determination that will not be upset on appeal if it has ‘a reasonable basis’ and was made ‘in accordance with accepted legal standards and in accordance with the facts of record.’” *Lievrouw v. Roth*, 157 Wis.2d 332, 348, 459 N.W.2d 850, 855 (Ct. App. 1990) (citations omitted). The inquiry is not whether this court would have admitted this evidence if it were ruling in the first instance. *State v. Fishnick*, 127 Wis.2d 247, 257, 378 N.W.2d 272, 278 (1985). Discretionary determinations made in regard to the admission of evidence will be affirmed as long as there is a reasonable basis for the trial court’s determination. *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983).

Boho contends the court erred by excluding Stanley’s letter. Boho argues the letter was admissible to prove his self-defense theory of the case because it was an example of preparation, motive, intent, knowledge or absence of mistake. We disagree. The letter does not reflect any propensity for violence by the victim or any ill-will between the defendant and the victim. The letter simply reflects that the victim was depressed about her relationships with men and does not support his claim that she possessed a violent state of mind against Boho in any way. The letter reflects no intent, plan or preparation for Stanley to physically attack or injure Boho. The trial court had a reasonable basis to exclude this

evidence on the basis that it lacked probative value as to any element of the offense charged or to the defendant's self-defense theory.

The court next considers Boho's contention that the "no contact" provision of his bail was not violated by his phone call to the victim from fifty miles away. Whether a phone call violates the "no contact" condition of bail presents a question of law which we review de novo. *State v. Turner*, 136 Wis.2d 333, 343-44, 401 N.W.2d 827, 832-33 (1987) (application of undisputed facts to principles of law presents a question of law). Boho argues that the trial court erroneously denied his motion to withdraw his no contest plea because the plea lacked a factual basis. To withdraw a no contest plea, Boho must show, by clear and convincing evidence, that the withdrawal is necessary to correct a manifest injustice. *State v. Spears*, 147 Wis.2d 429, 433 N.W.2d 595 (Ct. App. 1988). Boho bases his argument on the premise that the "no contact" condition is designed to solely stop witness intimidation and that because no threats or other attempts to intimidate were made, no violation occurred. Therefore, Boho asserts the no contest plea lacked a factual basis. This argument fails for several reasons.

First, no contact means simply that the defendant is to have no contact with a particular person, in this case Stanley. Boho argues the merit of the reasons underlying the no contact condition on appeal. The reasons underlying the no contact condition are irrelevant to whether the condition was violated. Any dispute with the reasons underlying the "no contact" condition should have been addressed to the trial court in a motion to modify conditions of bail before violating those conditions. A valid "no contact" restriction was a condition of Boho's release and his admitted phone call to the victim was a clear violation of that order.

Second, a “no contact” condition of bail is designed to prevent the influencing and harassing of a witness and does not relate solely to the intimidation of a witness. Intimidation or threats are but examples of improperly influencing a witness. Boho’s call to the victim in an apparent attempt to coax or sway her is as much a legitimate concern of the courts as is a witness who was threatened. Boho is potentially interfering with the amount of cooperation the district attorney’s office will receive from the victim and jeopardizing the prosecution’s ability to advance the case against him. Because these reasons create a sufficient factual basis for Boho’s no contest plea, he has not made the necessary showing of manifest injustice to withdraw the plea.

Because the trial court had a reasonable basis to exclude Stanley’s letter from evidence and because Boho’s call to the victim constituted a violation of the no contact condition of his bail, the judgments of conviction are affirmed.

By the Court.—Judgments and orders affirmed.

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