COURT OF APPEALS
DECISION
DATED AND RELEASED

May 29, 1997

NOTICE

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.

No. 96-3253-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

STEVEN WROTEN,

DEFENDANT-APPELLANT.

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

Before Eich, C.J., Roggensack and Deininger, JJ.

DEININGER, J. Steven Wroten appeals a judgment convicting him of substantial battery, § 940.19(3), STATS., and an order denying postconviction relief. He contends that the trial court deprived him of his right to present a defense by excluding evidence of a conversation he had with the victim prior to the beating. Wroten would have testified that the victim attempted to sell cocaine

to him, an offer which Wroten refused. We conclude that the trial court's exclusion of this testimony was an appropriate exercise of discretion, and that it did not violate Wroten's right to present a defense. Accordingly, we affirm the judgment and order.

BACKGROUND

In the early morning hours of February 10, 1995, outside a tavern in Reedsburg, Steven Wroten beat Timothy Murray's face with his fists. As a result of the beating, Murray suffered substantial trauma to his face and head, including bruises and abrasions on his cheek, lips and nose; lacerations to his forehead; and a severed artery. The State filed a criminal complaint charging Wroten with substantial battery, under § 940.19(3), STATS.

At trial, Wroten pursued a self-defense theory. He testified that Murray was the aggressor; that Murray had been obnoxious and had punched Wroten in the nose; and that Murray had attempted to choke him with the strings in Wroten's hooded sweatshirt. Wroten also sought to introduce evidence of a conversation between Murray and himself which occurred earlier in the evening of the altercation. Wroten claimed that Murray had attempted to sell drugs to him and that he refused Murray's offer. He argued that this conversation constituted a vital part of his self-defense theory because: (1) it provided the context for Wroten's actions in the ensuing altercation with Murray; and (2) it constituted evidence of Murray's motive and intent to assault Wroten.

The trial court ruled the evidence of the drug sale conversation inadmissible on the grounds that it was minimally relevant, impermissibly prejudicial, and not vital to the presentation of Wroten's self-defense theory. In denying postconviction relief, the trial court reaffirmed its exclusion of the

conversation between Wroten and Murray, concluding that "the proposed evidence regarding the alleged drug deal was not relevant to the charge in this case and not fundamental to the determination of the guilt or innocence of the defendant."

ANALYSIS

Wroten contends that the exclusion of the drug deal conversation evidence impermissibly deprived him of his constitutional right to present a defense.[1] Whether a defendant's right to present a defense has been improperly denied by the trial court is a question of constitutional fact which we review de novo. ***State v. Heft***, 185 Wis.2d 288, 296, 517 N.W.2d 494, 498 (1994).

A trial court may not "deny the defendant a fair trial or the right to present a defense by a mechanistic application of rules of evidence." ***State v. DeSantis***, 155 Wis.2d 774, 793, 456 N.W.2d 600, 609 (1990) (citing ***Davis v. Alaska***, 415 U.S. 308 (1974)). However, the constitutional right to present evidence is limited to the presentation of "relevant evidence not substantially outweighed by its prejudicial effect." ***State v. Pulizzano***, 155 Wis.2d 633, 646, 456 N.W.2d 325, 330 (1990). Excluding highly prejudicial evidence which has minimal, if any, probative value, does not violate the principles of evidentiary or constitutional law. ***DeSantis***, 155 Wis.2d at 793-94, 456 N.W.2d at 609.

A decision to admit or exclude evidence is a matter within the discretion of the trial court. *See* ***State v. Alsteen***, 108 Wis.2d 723, 727, 324

[1] A criminal defendant's due process rights include "'the right to a fair opportunity to defend against the State's accusations.'" ***State v. Evans***, 187 Wis.2d 66, 82, 522 N.W.2d 554, 560 (Ct. App. 1994) (quoting ***Chambers v. Mississippi***, 410 U.S. 284, 294 (1973)). "The right to present evidence is rooted in the Confrontation and Compulsory Process Clauses of the United States and Wisconsin Constitutions." ***Id.*** at 82-83, 522 N.W.2d at 560.

N.W.2d 426, 428 (1982). A trial court may exclude relevant evidence after weighing the probative value of the evidence against its potential prejudicial effect. Section 904.03, STATS.[2] ***State v. Hinz***, 121 Wis.2d 282, 285, 360 N.W.2d 56, 59 (Ct. App. 1984). We will uphold a trial court's determination if it exercised its discretion according to accepted legal standards and in accordance with the facts of record. ***State v. Jenkins***, 168 Wis.2d 175, 186, 483 N.W.2d 262, 265-66 (Ct. App.), *cert. denied*, 506 U.S. 1002 (1992).

Evidence of "other acts" of the victim may sometimes be relevant and admissible to support a claim of self-defense. ***State v. Boykins***, 119 Wis.2d 272, 277, 350 N.W.2d 710, 713 (Ct. App. 1984) (violent character of victim may be shown by prior specific instances of violent behavior known to defendant). Even when other acts evidence is offered for a proper purpose, however, its admissibility is subject to the trial court's determination of relevancy and probative value in relation to the danger of unfair prejudice under § 904.03, STATS. ***State v. Plymesser***, 172 Wis.2d 583, 592, 493 N.W.2d 367, 372 (1992).

We conclude that the trial court did not erroneously exercise its discretion in ruling that evidence of the drug sale conversation was inadmissible. The trial court considered Wroten's argument that the evidence was relevant and admissible to show motive and intent under § 904.04(2), STATS.[3] The court concluded, however, that the drug deal conversation testimony was not essential to

[2] Under § 904.03, STATS., a court may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice."

[3] Under § 904.04(2), STATS., evidence of "other crimes, wrongs, or acts is not admissible to prove the character of a person," but that section does not exclude evidence if "offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

the presentation of Wroten's self-defense claim, and that admitting evidence of the alleged conversation would impermissibly prejudice the State's case:

> [The proffered testimony] is not something that the jury should deal with. That it tends to prejudice the jury more than it deals with the truth. The fact that they are arguing. The fact that Mr. Murray's, Mr. Wroten's statements, initiates discussions, is in his face and won't let him alone, I have no problems with. The fact that it was [an] alleged drug deal, I do have a problem with.
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> ….
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> … I will find that it is not admissible. I do find that it is prejudicial and does taint the proceedings beyond what is necessary. I do not find that the fact of a cocaine deal is necessary for the testimony of the argument.

The trial court's comments show that it considered the relevance and probative value of the proposed testimony and found them to be slight. The court deemed the danger of unfair prejudice in telling the jury of the alleged drug sale offer by the victim to be substantial. The trial court applied a proper standard of law to the relevant facts and arrived at a conclusion a reasonable judge could reach; we thus have no basis to disturb its discretionary ruling. ***Loy v. Bunderson***, 107 Wis.2d 400, 414-15, 320 N.W.2d 175, 184 (1982).

Having concluded that the trial court did not abuse its discretion in excluding the drug sale testimony, it follows that the ruling did not violate Wroten's constitutional right to present a defense. *See* ***DeSantis***, 155 Wis.2d at 793-94, 456 N.W.2d at 609. Wroten's defense did not hinge on the alleged drug sale conversation. He was able to present ample evidence in support of his claim of self-defense. The jury heard evidence that both Murray and Wroten had been drinking for several hours prior to the fight, and that the two had conversed and argued earlier in the evening. Wroten himself testified that Murray was the

aggressor in the incident, that Murray had punched Wroten in the nose, and that he had attempted to choke Wroten with the strings of his sweatshirt.

In summary, we conclude that Wroten's ability to present his defense to the jury was not adversely affected by the trial court's evidentiary ruling. Accordingly we affirm the judgment convicting him of substantial battery and the order denying postconviction relief.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.