

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 7, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2004AP3105-CR**

**Cir. Ct. No. 2003CM9064**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**LARRY D. HICKS,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Milwaukee County: MARSHALL B. MURRAY, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.<sup>1</sup> Larry D. Hicks appeals from a judgment entered after a jury found him guilty of one count of disorderly conduct, contrary

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

to WIS. STAT. § 947.01 (2003-04).<sup>2</sup> He claims the trial court erroneously exercised its discretion in allowing the State's witnesses to testify that Hicks had been arrested for domestic-violence-related conduct within seventy-two hours of the disorderly conduct incident. Because the trial court did not erroneously exercise its discretion in admitting the limited evidence, which related to the context of this case, this court affirms.

### BACKGROUND

¶2 On November 9, 2003, Hicks pried open a living room window to the home located at 3534 N. 24th Place, Milwaukee, Wisconsin, which he owned with his estranged wife, Maelethie. Maelethie and Hicks were separated and Hicks did not have keys to the home. Hicks entered the home while Maelethie and their son, Larry, were at church. When Larry returned to the home to retrieve a cellular phone, he observed Hicks attempting to barricade the front door and windows to prevent Larry and Maelethie from entering the residence.

¶3 Larry telephoned police and went to church to advise his mother as to what was happening. When Larry and Maelethie returned to the home, Hicks was inside and had blocked all points of entry. The police arrived and convinced Hicks to open the door and let them in. After conducting an investigation, the police arrested Hicks for disorderly conduct. Hicks pled not guilty. Prior to trial, he filed a motion seeking to prohibit the State from introducing other bad acts evidence. Specifically, he did not want the jury to hear about an incident which had occurred two days prior to November 9th. On November 7th, Hicks had been

---

<sup>2</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

arrested for domestic violence because he was in the home tying the door shut and attempting to ignite the house. The case was “no-processed”<sup>3</sup> and Hicks was not convicted. Everyone believed that a seventy-two hour no-contact order was issued in conjunction with that arrest, which is standard procedure. For some unknown reason, however, the order could not be located.

¶4 The trial court ruled that it would not permit the State to introduce evidence of the November 7th domestic violence incident. It did indicate, however, that the victims could refer to the earlier incident to explain why they feared for their safety on November 9th. During the testimony of the police officer, defense counsel asked about the seventy-two hour no-contact order. The State then requested an in-chambers conference to discuss additional questions pertaining to this. In essence, the State argued, for the sake of completeness, that it should be permitted to inform the jury that Hicks was arrested, which is why everyone believed that there was a no-contact order. The trial court ruled that in asking the question, defense counsel opened the door for clarification and that it would permit the State to introduce the fact that Hicks was arrested and that is why the police believed the seventy-two hour no-contact order existed. The trial court ruled, however, that other details relating to the November 7th event would not be admitted. The police officer then explained to the jury that they had investigated whether a seventy-two hour no-contact order was in place because Maelethie insisted that the no-contact order existed. She had been told that a no-contact order would be issued due to the arrest of Hicks two days earlier. However, an investigation revealed that no no-contact order was issued, that no

---

<sup>3</sup> “No-processed” means the district attorney did not issue charges.

one could explain why it had not been issued, and that it should have been issued because of the arrest.

¶5 At the conclusion of the trial, the jury found Hicks guilty of disorderly conduct. He was sentenced to sixty days in the House of Correction. Hicks now appeals.

## DISCUSSION

¶6 Hicks contends that the trial court erroneously exercised its discretion in allowing the victims to testify that they feared Hicks because of prior behavior, allowing into evidence the fact that he was arrested two days prior to November 9th, and permitting the discussion regarding the seventy-two hour no-contact order. This court's review of evidentiary admissions is limited. An appellate court will not overturn a trial court's decision on an evidentiary ruling as long as the trial court examined the relevant facts, applied a proper standard of law, and demonstrated a rational process in reaching a reasonable conclusion. *State v. Sullivan*, 216 Wis. 2d 768, 780-81, 576 N.W.2d 30 (1998). In applying this deferential standard, this court cannot conclude that there was an erroneous exercise of discretion.

¶7 Admissibility of other acts evidence is governed by statute:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identify, or absence of mistake or accident.

WIS. STAT. § 904.04(2). Thus, other acts evidence must first be offered for an acceptable purpose. *Sullivan*, 216 Wis. 2d at 772. It also must be relevant. *Id.*

Finally, the probative value of the evidence must not be outweighed by unfair prejudice. *Id.* at 773.

¶8 Our supreme court recently held that an acceptable purpose for admitting other acts evidence includes “establishing context.” *State v. Hunt*, 2003 WI 81, ¶58, 263 Wis. 2d 1, 666 N.W.2d 771. “Other-acts evidence is permissible to show the context of the crime and to provide a complete explanation of the case.” *Id.* Like in *Hunt*, the evidence proffered here was offered to establish context. Hicks was arrested two days before the November 9th incident. Both the victims and the police believed that, as a result of the arrest, there was a no-contact order prohibiting Hicks from coming to the home. The police indicated that when they were first called to the home on November 9th, it was to investigate the violation of a restraining order. Hicks told police he had a legal right to be in the home. Maelethie insisted that a no-contact order existed. She believed this because that is what she was told by someone in the district attorney’s office just two days before Hicks came and locked her out of her home. Much of the police investigation in the November 9th incident revolved around determining whether or not the no-contact order existed.

¶9 Thus, the trial court in this case did not error in allowing the limited testimony about the prior arrest and the no-contact order. It was offered for the acceptable purpose of establishing the context of the November 9th event. For these same reasons, its admission was relevant. The last question then is whether its probative value was outweighed by unfair prejudice. In this regard, the trial court was very careful about admitting very limited amounts of information relative to the events of November 7th. The trial court did not allow introduction of any of the specific details about what happened on that date. The only information admitted was the fact that Hicks was arrested, that the victims feared

for their safety on November 9th, and general discussion about the seventy-two hour no-contact order. This information was not unfairly prejudicial to Hicks. The very brief testimony established the context which was necessary for the jury to understand the events and did unfairly prejudice Hicks.

¶10 Based on the foregoing, this court concludes that there was a proper basis to admit the limited testimony and it can be inferred from the record that the trial court assessed the proper factors, applied the correct law, and reached a reasonable determination. This court cannot find that there was an erroneous exercise of discretion. Accordingly, the judgment is affirmed.

*By the Court.*—Judgment affirmed.

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

