

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 10, 2006

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. 2005AP298-CR

Cir. Ct. No. 2003CF4118

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

VINCENT KONRAD KNOX,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 WEDEMEYER, P.J. Vincent Konrad Knox appeals from a judgment entered after a jury found him guilty of election fraud as a party to a crime, misconduct in public office, and perjury, contrary to WIS. STAT.

§§ 12.13(1)(b), 939.05, 946.12(2) and 946.31(1)(c) (2003-04).¹ Knox claims that the trial court erroneously exercised its discretion in admitting other-acts evidence. Because the trial court did not erroneously exercise its discretion in admitting the other-acts evidence, we affirm.

BACKGROUND

¶2 In July 2003, Knox and eight other defendants were charged with an array of crimes regarding voter fraud in connection with a special election held on March 4, 2003, for the position of Milwaukee County supervisor for District 5. The complaint identified Knox as a deputy voter registrar appointed by the City of Milwaukee Election Commission. The complaint alleged that the African-American Coalition for Empowerment, Inc. (ACE) hired Knox to run its absentee ballot program for the special election.

¶3 Knox supervised field workers who contacted absentee ballot voters on behalf of ACE, assisted them in completing absentee ballots, witnessed the registration and ballot signing, and returned them to Knox. Knox then delivered the ballots and registration cards to the Election Commission. An investigation occurred with respect to the absentee ballots/registration. Interviews with voters named on the absentee ballots revealed that their signatures had been forged.

¶4 As a result of the investigation, Knox and others were charged. The complaint alleged specifically that Knox had committed election fraud when he averred to an election official that Willie Dawson signed a voter registration card

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

in front of Knox; that Knox committed perjury when he testified during a John Doe proceeding that he personally witnessed Willie Dawson sign a voter registration card; and that Knox committed misconduct in the public office of deputy voter registrar by intentionally making a false entry on Willie Dawson's voter registration card.

¶5 In November 2003, Knox filed a motion to sever the case against him from his eight co-defendants. The trial court granted the motion. In January 2004, the State filed a motion to admit other-acts evidence. The State asserted that the evidence would be offered to show motive, intent, plan, preparation and absence of mistake. The other-acts evidence consisted of absentee ballots and voter registration materials submitted by ACE volunteers supervised by Knox, which contained forged signatures, names of nonexistent people, or false, nonexistent or nonhabitable addresses.

¶6 Knox objected to the admission of the other acts evidence as not being offered for an acceptable purpose and unduly prejudicial. The trial court conducted a hearing on the motion. At the conclusion of the hearing, the trial court ruled:

I think that under subsection (2) [of WIS. STAT. § 904.04] that the State's intent -- and I think the evidence would show whether or not the defendant in this case, Vincent Knox, intended to forge documents, intended to work to get forged documents or forged ballots for Mr. Holloway. It would show his motives that he was retained and paid and was involved with ACE. It would also show the preparation and plan, that these other individuals were involved. It's not just an isolated incident where one person made a mistake.

As the State's theory is going to be, it's a pattern to form -- or to favor a particular candidate, in this case specifically Mr. Holloway. Mr. Knox, the State's theory is, and I assume they'll be able to show it, ran the program for ACE,

was a member of its Board of Directors. All the ballots were turned in to Mr. Knox, and I believe that's the testimony that's going to be offered, and he ran the absentee ballot program; and, as they pointed out in their affidavit, he also paid bonuses or incentives for bringing in absentee ballots.

Their theory is he was the central figure and he orchestrated the absentee ballot program. Not to offer it in would basically tie the State's hand.

As I said, the defense is entitled to its theory, so is the State.

¶7 The case proceeded to trial. The State offered the other-acts evidence through the testimony of Paul Janicki, the Milwaukee Police Department's chief document examiner and Aaron Weiss, a former investigator in the Milwaukee District Attorney's office. Janicki identified a report he prepared identifying sixty signatures on absentee ballots that did not match the signature on the absentee request form, including Dawson's name.

¶8 Weiss testified about his investigation of absentee voting documents that were signed by voters who appeared to be fictitious, and had addresses which were vacant lots or nonexistent locations.

¶9 Knox testified in his own defense. He admitted that Dawson probably did not sign his voter registration card, which Knox had signed as witnessing Dawson's signature. Knox testified that he did not administer the required oath to Dawson and that he had never seen Dawson until he entered the courtroom for the trial. Knox also admitted that he made an untrue statement during his testimony at the John Doe proceeding.

¶10 The trial court gave the jury a cautionary instruction with respect to the other-acts evidence, advising them to use the other-acts evidence only for the limited purpose of motive, intent, preparation or plan, and context or background.

The instruction advised them that they could not use this evidence to conclude that Knox was a bad person, and therefore guilty of the offense charged.

¶11 The jury found Knox guilty of all three counts and he was sentenced by the trial court. Judgment was entered. Knox now appeals.

DISCUSSION

¶12 The only issue Knox raises in this appeal is whether the trial court erred in admitting the other-acts evidence. He argues both that the evidence was not admitted for any acceptable purpose and that its probative value was outweighed by unfair prejudice. We reject his arguments and affirm.

¶13 The determination of whether evidence was properly admitted is reviewed under the erroneous exercise of discretion standard. *State v. Hunt*, 2003 WI 81, ¶34, 263 Wis. 2d 1, 666 N.W.2d 771. We will not overturn a discretionary determination if the trial court considered the proper facts, applied the correct law, and reached a reasonable determination. *Id.*

¶14 WISCONSIN STAT. § 904.04(2) addresses other-acts evidence. That statute provides in pertinent part: “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.” Other-acts evidence may be admitted “when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* The seminal case which applies the statutory rubrics is *State v. Sullivan*, 216 Wis. 2d 768, 576 N.W.2d 30 (1998). In *Sullivan*, our supreme court set forth a three-part analysis to determine whether other-acts evidence was properly admitted: (1) is the other-acts evidence offered for an acceptable purpose under § 904.04(2); (2) is the

evidence relevant; and (3) is the probative value of the evidence substantially outweighed by the danger of unfair prejudice. *Sullivan*, 216 Wis. 2d at 773.

¶15 We address these three factors to determine whether the trial court properly exercised its discretion. First, we agree with the trial court that the other-acts evidence was admitted for an acceptable purpose, including preparation and absence of mistake. Knox's apparent theory of defense was going to be that his witnessing and signing Dawson's voter registration card was simply a mistake. The State, as a result, introduced the other-acts evidence to demonstrate that Knox orchestrated a scheme, plan and preparation to manipulate the absentee ballots in favor of one particular candidate. The existence of the sheer volume of fraudulent absentee ballots/registration cards submitted under his supervision, instruction and direction showed the jury that this was not a simple mistake. Accordingly, there clearly was an admissible purpose for the other-acts evidence.

¶16 Second, with respect to relevance, Knox does not dispute that the evidence was relevant. Thus, we need not address this part of the *Sullivan* test.

¶17 Third, Knox argues that any value of the testimony was outweighed by unfair prejudice. We cannot agree. Knox's argument appears to be it is unfair to force him to defend some sixty voter-fraud allegations when he was only charged with a single offense—related to Dawson. We agree with the State that the other-acts evidence carried exceptionally high probative value based on the close proximity in time, place, and circumstances to the charged offenses. *See State v. Gray*, 225 Wis. 2d 39, 64, 590 N.W.2d 918 (1999). These acts all occurred within a short period of time, and in the same supervisory district for a particular special election. This, together with the two cautionary instructions provided to the jury, results in the conclusion that the probative value of the

evidence was not substantially outweighed by unfair prejudice. The jury was instructed twice that the other-acts evidence was admitted for limited purposes. Accordingly, Knox has failed to establish that the evidence should not have been admitted pursuant to the third part of the *Sullivan* test.

¶18 Based on the foregoing, we conclude that the trial court did not erroneously exercise its discretion in admitting the other-acts evidence. Because we have concluded that the evidence was properly admitted, we need not address Knox's harmless error analysis. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need to be addressed).

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

