

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 1, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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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. 2005AP1167-CR**

**Cir. Ct. No. 2003CF4694**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RUDOLPH D. SPEARS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELSA LAMEAS, Judge. *Affirmed.*

Before Vergeront, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Rudolph Spears appeals the sentence imposed on his conviction for possession of a firearm by a felon. He claims the trial court placed undue weight on the circumstances surrounding a separate charge on which he was acquitted. We disagree and affirm.

¶2 Spears was charged in an amended information with first-degree intentional homicide by use of a dangerous weapon and possession of a firearm by a felon based on an incident in which he admittedly shot and killed Randy Scott. Spears entered a guilty plea to the possession of a firearm charge, but went to trial on the homicide charge on a self-defense theory.

¶3 Testimony at trial established that the victim, Scott, had threatened Tammy Brown and tried to pull her out of her car earlier in the day. Brown responded by attempting to run Scott over, but instead crashing her car into a garage. Brown left the scene, called a tow truck, and eventually returned to the scene with her roommate's boyfriend, Spears, to wait for the tow truck. Spears carried a loaded shotgun in his car for protection based on a number of past incidents in which he had seen or heard about Scott both threatening and actually shooting at people in the neighborhood.

¶4 Meanwhile, Scott had called the police to report Brown's attempt to run him over. When the tow truck came, Scott attempted to prevent the removal of Brown's car until the police arrived. Spears testified that Scott began chasing Brown around, threatening her. Scott then started running at Spears, reaching one of his hands behind his back. Spears thought Scott was reaching for a gun, so he grabbed his own shotgun from the seat of his car and shot Scott three times. Based on this evidence, the jury acquitted Spears on the homicide count.

¶5 The trial court imposed the maximum term of five years of initial incarceration and five years of extended supervision on the firearm possession count. The court emphasized: Spears had two prior felonies; he had exercised "abysmally poor judgment" and had enough intelligence and ability to have known better; keeping a loaded weapon in his vehicle was inherently dangerous

and did not make much sense from the standpoint of Spears' asserted explanation for acquiring the gun to defend himself while at his girlfriend's house; Spears' possession of the weapon had "emboldened him to interject himself" into the situation between Brown and Scott and had ended in the death of another human being; and, finally, Spears' possession of the gun had also endangered the tow truck driver and his daughter in just the sort of manner for which possession of firearms by felons is prohibited in the first place.

¶6 Sentence determinations are accorded a presumption of reasonableness and will not be set aside unless the trial court has erroneously exercised its discretion. *State v. Schrieber*, 2002 WI App 75, ¶¶7-9, 251 Wis. 2d 690, 642 N.W.2d 621. In order to properly exercise its discretion, the trial court should take into consideration such factors as the gravity of the offense, the defendant's character and rehabilitative needs, and the need to protect the public. *Id.* The trial court may decide what weight to give each factor, however. *Id.* Therefore, in order to demonstrate a misuse of discretion, a defendant must show that the record contains an unreasonable or unjustifiable basis for the trial court's action, resulting in a sentence that is excessive or "so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *Id.*

¶7 Spears has not persuaded this court that the trial court misused its sentencing discretion here. In considering the seriousness of the possession of a firearm offense, the trial court could properly consider that the weapon was loaded, rather than unloaded; that it was kept in a vehicle rather than more safely locked up at home; and that Spears' acquisition of the weapon in response to a perceived threat rather than contacting authorities to report the threatening conduct

demonstrated poor judgment that placed the community at risk. Although the court did note that Spears' possession of the weapon ultimately resulted in the death of another human being, we are satisfied that, in context, that comment merely emphasized how inherently dangerous it was to keep a loaded weapon in a vehicle, where it could be used in the heat of the moment, and did not indicate that the court was punishing Spears for having shot Scott. Similarly, the court's comments regarding how Spears' possession of the weapon emboldened him to intervene in the situation between Brown and Scott was relevant to why it was unreasonable for Spears to have acquired the weapon in the first place. In sum, we do not agree that the trial court sentenced Spears for the charge on which he was acquitted. The record reasonably supports the imposition of the maximum sentence that was imposed.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

