COURT OF APPEALS
DECISION
DATED AND FILED

October 17, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP549-CR **Cir. Ct. No. 2001CF6519**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAVON J. GRADY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN J. DI MOTTO, Judge. *Affirmed*.

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

¶1 PER CURIAM. Ravon Grady appeals from the judgment of conviction entered against him. He argues that the circuit court erred when it denied his motion to sever the trial of the charges against him. Because we conclude that the circuit court properly exercised it discretion we affirm.

¶2 Grady was charged with two counts of first-degree sexual assault, and eleven counts of armed robbery with threat of force while concealing his identity. The underlying incidents occurred on November 23, 26 and 29, 2001. Grady moved to sever the charges into three separate trials for each of the days on which the incidents occurred. Grady argued that the jury would not be able to segregate the thirteen charges and that the "spillover effect" from one charge to another would prejudice him. The State responded that it was appropriate to try all of these charges in one trial because they were all part of a common plan and they occurred over a small number of days. Specifically, all of the crimes were committed with a gun, the perpetrator made the same kind of comments to the different victims, the crimes occurred in the same area of Milwaukee, the perpetrator wore a mask, and items stolen in each incident were found when Grady was arrested. The court denied the motion to sever.

¶3 Joinder of charges is proper when two or more crimes are of the same or similar character and occur over a relatively short amount of time, or when they arise from the same act or transaction. ***State v. Locke***, 177 Wis. 2d 590, 596, 502 N.W.2d 891 (Ct. App. 1993). Acts that occurred two years apart have been considered to have occurred over a relatively short amount of time. ***Id.***

¶4 After joinder, the circuit court may sever the charges and hold separate trials if it appears that the defendant will be prejudiced by trying the charges together. ***Id.*** at 597. The circuit court must weigh the potential prejudice to the defendant against the public's interest in having a trial on multiple counts. ***Id.*** "A motion for severance is addressed to the trial court's discretion." ***Id.*** The reviewing court will not disturb the circuit court's exercise of that discretion unless the defendant can establish that he or she suffered substantial prejudice by the failure to sever. ***Id.*** "In evaluating the potential for prejudice, courts have

recognized that, when evidence of the counts sought to be severed would be admissible in separate trials, the risk of prejudice arising because of joinder is generally not significant." ***Id.*** (citation omitted).

¶5 In this case, we conclude that Grady did not establish at trial that he would be prejudiced, nor has he shown on appeal that he was prejudiced, by the joinder. The incidents occurred over a period of six days. This certainly is within a relatively short time frame. Further, as the circuit court found, there were many similarities among the incidents, including the crime, the location, and the way the perpetrator was dressed. Grady also has not established that the crimes would not be admissible in separate trials. In short, we conclude that the trial court properly exercised its discretion when it denied the motion to sever. We affirm.[1]

By the Court.—Judgment affirmed.

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

[1] In the brief-in-chief, the appellant's counsel cites to and argues from an unpublished case from this court. The Rules of Appellate Procedure prohibit the citation of unpublished opinions. WIS. STAT. RULE 809.23(3) (2003-04). Counsel is admonished for having cited such an opinion, and directed not to do so in future filings. Failure to comply with the Rules of Appellate Procedure may result in counsel being sanctioned by the court. *See* WIS. STAT. RULE 809.83.