

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 24, 2007

David R. Schanker
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 Nos. 2006AP2723-CR
2006AP2724-CR**

**Cir. Ct. Nos. 2005CF267
2005CM1338**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CONNIE R. CLOSE,

DEFENDANT-APPELLANT.

APPEALS from judgments of the circuit court for St. Croix County:
EDWARD F. VLACK, III, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Connie Close appeals a judgment of conviction for one count of trespass to a dwelling and two counts of contempt of court. Close

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

argues the circuit court erred when it sentenced her to three years' probation after concluding her trespass was an act of domestic abuse. Because we agree Close's actions constituted domestic abuse, we affirm the judgment.

BACKGROUND

¶2 Shortly after 4:30 on the morning of November 28, 2005, Thomas Dowd heard the front door of his home open and close. Upon investigating, Dowd noticed a pair of women's shoes outside the door, and suspected his ex-wife, Close, might be inside the house. He and Close had just gone through an acrimonious child placement proceeding. He searched the house and found Close hiding in a closet. He told Close to leave the house, and she complied. Dowd reported the incident to police.

¶3 On April 6, 2006, Close entered guilty pleas to criminal trespass to a dwelling and two counts of contempt of court. Close asked for two years of probation, while the State requested three years of probation. The parties agree the circuit court is not precluded from imposing three years of probation if the trespass Close committed constituted a crime of domestic abuse. WISCONSIN STAT. § 968.075(1)(a) defines domestic abuse as:

Any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225(1), (2) or (3).
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

After finding Close guilty, the circuit court determined that Close's conduct constituted domestic abuse and sentenced her to three years of probation, stating:

I have gone through all the definitions, the question is whether or not the act ... is one which may cause the other person reasonably to fear imminent engagement in the conduct described under 1, 2, and 3, and I would be quite concerned if somebody was in my house at 5:00 in the morning when they were not suppose to be there and so I am determining that it does fall within that definition.

DISCUSSION

¶4 Sentencing is a discretionary decision we will not disturb absent an erroneous exercise of that discretion. *State v. Taylor*, 2006 WI 22, ¶17, 289 Wis. 2d 34, 710 N.W.2d 466. The circuit court properly exercises its discretion when it engages in a reasoning process that considers the applicable law and the facts of record, leading to a conclusion that a reasonable judge could reach. *State v. Jeske*, 197 Wis. 2d 905, 912, 541 N.W.2d 225 (Ct. App. 1995). However, a circuit court erroneously exercises its discretion if it bases its decision on an error of law. *State v. St. George*, 2002 WI 50, ¶37, 252 Wis. 2d 499, 643 N.W.2d 777.

¶5 Construction of a statute and its application to the facts the circuit court found presents a question of law we review without deference. *State v. Schmidt*, 2004 WI App 235, ¶13, 277 Wis. 2d 561, 691 N.W.2d 379. “When we construe a statute, we begin with the language of the statute and give it the common, ordinary, and accepted meaning...” *Id.*, ¶15. “Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. Additionally, a statute should be interpreted so as to avoid absurd results. *See id.*

¶6 Close argues the court erred because Dowd’s actions in searching the house for Close and then telling her to leave when he found her showed Close’s actions did not in fact cause him any fear. Close’s interpretation does not give effect to every word in the statute as it entirely ignores the word “may.” *See id.*, ¶45. Domestic abuse includes all conduct that “may” cause fear in the other person, not only conduct that actually does cause fear. Here, the circuit court could reasonably conclude that Close’s conduct of surreptitiously breaking into her ex-husband’s house in the early morning hours is conduct that *may* have caused him fear. If the legislature intended to criminalize conduct that actually causes fear, instead of conduct that has the potential to, it would have defined domestic abuse as a “physical act that *causes* the other person” to fear injury. That it chose instead to use the words “may cause” indicates it intended to include conduct that has the potential to cause fear, even if it in fact does not.

¶7 Close’s conduct had the potential to cause Dowd fear. Therefore, it was reasonable for the circuit court to conclude that Close’s conduct constituted domestic abuse, thereby permitting it to impose three years of probation.

By the Court.—Judgments affirmed.

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

