COURT OF APPEALS
DECISION
DATED AND FILED

March 11, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 00-2426 **Cir. Ct. No. 98CI000004**

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

IN RE THE COMMITMENT OF GREGORY J. FRANKLIN:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

GREGORY J. FRANKLIN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

¶1 CURLEY, J. Gregory J. Franklin appeals his commitment under Chapter 980 of the Wisconsin Statutes after a jury found him to be a sexually

violent person pursuant to WIS. STAT. § 980.01(7) (1997-98).[1] He argues that: (1) the State failed to prove that he lacked the volitional ability to control his dangerous and sexually violent behavior, as required by ***Kansas v. Crane***, 534 U.S. 407 (2002); (2) the trial court erred in admitting "other acts" evidence; (3) the trial court erroneously exercised its discretion in refusing to give his special jury instruction; (4) the legislative change made to Chapter 980 directing that a committee be sent to a secured mental facility and prohibiting the option of supervised release into the community violates his right to equal protection and due process; and (5) his commitment should be reversed in the interest of justice. We affirm.

I. BACKGROUND.

¶2 In March 1998, the State filed a petition alleging that Franklin was a sexually violent person and that he was within 90 days of release from his sentences. At the time Franklin was serving sentences for two convictions of second-degree sexual assault, and one conviction of attempted second-degree sexual assault, contrary to WIS. STAT. §§ 940.225(2)(a) and 939.32 (1985-86), all of which were being served consecutively to his earlier conviction for first-degree sexual assault, contrary to WIS. STAT. § 940.225(1)(b) (1979-80). The petition further alleged that Franklin had a mental disorder; specifically, schizophrenia, disorganized type, as well as alcohol abuse and other substance abuse, which affected his emotional or volitional capacity and predisposed him to engage in acts of sexual violence. After a probable cause hearing, various pretrial motions were

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

brought by both parties, including the State's request to introduce presentence investigation reports conducted on Franklin in the past. Over Franklin's objection, the trial court granted the State's motion.

¶3 Ultimately, a jury trial was held. As anticipated, during the trial the State introduced several presentence investigation reports compiled for use during Franklin's sentencings for unrelated crimes. These reports revealed information that touched on Franklin's adjustment in prison. They included information that Franklin made coffee in his toilet bowl, his self-report of hearing voices, and his confession that he was not in control when he sexually assaulted his victims. Also admitted into evidence were Franklin's entire juvenile record and his adult criminal record.

¶4 During the trial, Dr. Dennis Doren, a State's expert witness, testified that in assessing Franklin's potential risk to reoffend, he took into consideration Franklin's anticipated date of release and the fact that he would only be on parole until January 2003. Franklin objected to this testimony because the parties had agreed not to discuss disposition. The trial court overruled his objection.

¶5 At the jury instruction conference following the close of testimony, Franklin's attorney sought to have the trial court instruct the jury that Franklin would be subject to a civil commitment if released and to explain to the jury the needed elements to secure a civil commitment. The trial court denied the request finding that such an instruction would only mislead the jury. On June 28, 2000, the jury found Franklin to be a sexually violent person. Following this finding, the trial court ordered Franklin to be committed to a secure facility.

¶6 In his post-commitment motion, Franklin argued that the change in the law prohibiting ch. 980 committees to be conditionally released into the

community violated due process and equal protection. Franklin contended that persons committed civilly and those committed after a finding of not guilty by reason of mental disease or defect were similarly situated to him. He concluded that since these persons could be conditionally released, his disparate and more punitive treatment as a ch. 980 committee violated his rights. The trial court disagreed and determined that a rational reason existed to treat ch. 980 committees differently than other committed persons–the reason for the disparity being that ch. 980 committees pose a greater risk to the public.

II. ANALYSIS.

*A. Pursuant to **State v. Laxton**, the State was not required to prove that Franklin had an inability to exercise volitional control.*

¶7 Franklin argues that "a crucial element of a ch. 980 commitment was neither alleged nor was the subject of a finding by the jury." Relying on the United States Supreme Court's decision in ***Kansas v. Crane***, 534 U.S. 407 (2002), Franklin contends that the State was obligated to prove that he was unable to control his harmful and violent sexual acts towards others. He submits that without such a finding, his due process rights were violated and his commitment should be overturned. Although Franklin acknowledges that the holding in ***Laxton*** resolves the issue in the State's favor, he submits that the ***Laxton*** holding is in conflict with the United States Supreme Court's mandate requiring a separate finding that a committee is unable to control his conduct.

¶8 In ***Laxton***, our supreme court opined that a civil commitment under ch. 980 does not require a separate factual finding regarding the individual's inability to control his or her behavior:

> Civil commitment under Wis. Stat. ch. 980 does not require a separate factual finding regarding the individual's serious difficulty in controlling behavior. In ***Crane***, the United States Supreme Court rejected an absolutist approach, stating that "the Constitution's safeguards of human liberty in the area of mental illness and the law are not always best enforced through precise bright-line rules." ***Crane*** holds that there must be proof of a mental disorder and a link between the mental disorder and the individual's lack of control. Significantly, however, the Court recognized that lack of control is not "demonstrable with mathematical precision." "It is enough to say that there must be proof of serious difficulty in controlling behavior." We conclude that the required proof of lack of control, therefore, may be established by evidence of the individual's mental disorder and requisite level of dangerousness, which together distinguish a dangerous sexual offender who has serious difficulty controlling his or her behavior from a dangerous but typical recidivist.

Laxton, 2002 WI 82, ¶21, 254 Wis. 2d 185, 647 N.W.2d 784 (citations omitted). Because this court is bound to follow ***Laxton*** and cannot overrule the supreme court decision, Franklin's argument fails. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997) (stating that the court of appeals does not have the power to overrule, modify or withdraw language from an opinion of the supreme court).

B. The trial court properly admitted "other acts" evidence.

¶9 Franklin submits that the trial court erroneously exercised its discretion when it admitted "other acts" evidence at trial. Franklin argues that the admission of other acts evidence in his trial violated the holdings of ***Whitty v. State***, 34 Wis. 2d 278, 149 N.W.2d 557 (1967), and ***State v. Sullivan***, 216 Wis. 2d 768, 576 N.W.2d 30 (1998). ***Sullivan*** teaches that under WIS. STAT. § 904.04(2), receipt of other acts evidence must be measured by a three-step analysis: (1) whether the other acts evidence relates to a fact or proposition that is of consequence to a determination of action, i.e., whether the evidence is relevant; (2)

whether the evidence has probative value; and (3) whether the probative value of the evidence is substantially outweighed by the dangers of unfair prejudice, confusion, misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. *See* ***Sullivan***, 216 Wis. 2d at 771-73. Franklin submits that the introduction of his institutional conduct reports, his juvenile record, and his nonsexual adult criminal record constituted irrelevant and unfairly prejudicial evidence. We are not persuaded.

¶10 The trial court's decision to admit or exclude evidence is discretionary and will not be upset on appeal absent an erroneous exercise of discretion. *See* ***State v. Jenkins***, 168 Wis. 2d 175, 186, 483 N.W.2d 262 (Ct. App. 1992). Furthermore, we may affirm a discretionary determination of the trial court based on a rationale not advanced by the trial court when there is evidence in the appellate record to support that rationale. *See* ***id.*** at 190. In the instant case, although we agree with the trial court's decision to admit the evidence, we do so for other reasons. ***State v. Holt***, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985) (stating that an appellate court may affirm a trial court's correct ruling, irrespective of the trial court's rationale, on a theory or reasoning not relied upon by the trial court).

¶11 WISCONSIN STAT. § 904.04(2), which governs the admission of other acts evidence such as that objected to by Franklin, states:

> OTHER CRIMES, WRONGS, OR ACTS. 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, identity, or absence of mistake or accident.

¶12 Generally, WIS. STAT. § 904.04(2) applies in criminal cases. *See* ***Lievrouw v. Roth***, 157 Wis. 2d 332, 349, 459 N.W.2d 850 (Ct. App. 1990). However, other acts evidence may also be admissible for limited reasons in civil cases depending on the purpose for which it is offered. *See, e.g.*, ***Bilgrien v. Ulrich***, 150 Wis. 532, 137 N.W. 759 (1912) (admitting specific instances of conduct in a defamation action because the character or a character trait of the defendant was an essential element of proof); ***Lievrouw***, 157 Wis. 2d at 349-50 (holding that evidence of other incidents of drunk driving by a defendant was admissible in a civil action seeking compensatory and punitive damages arising out of an accident which occurred while the defendant was allegedly intoxicated in order to show that she was aware of dangers of driving while intoxicated); ***Callan v. Peters Constr. Co.***, 94 Wis. 2d 225, 231-33, 288 N.W.2d 146 (Ct. App. 1979) (admitting evidence of a prior accident at shopping mall to prove notice of an unsafe condition). Thus, for example, other acts evidence may be admitted where character is at issue, i.e., the character of a party to the case is an essential element of the case. *See* WIS. STAT. § 904.04(2).

¶13 Here, Franklin was not being prosecuted for a crime. Rather, the State sought to have him committed because, as alleged, the State believed him to suffer from a mental disorder that predisposed him to engage in acts of sexual violence and that predisposition made it substantially probable that he would engage in future acts of sexual violence. Moreover, this evidence was not admitted to show that Franklin suffered from a mental disorder, that he was convicted of sexually violent crimes, or that he was likely to engage in future sexually violent crimes. Consequently, the evidence was not offered to show Franklin's character trait in order to draw the inference that he acted in conformity with that trait on a previous occasion. Rather, the evidence was offered to prove

an element of the State's case – that Franklin was a sexually violent person pursuant to WIS. STAT. § 980.01(7).

¶14 Additionally, although Franklin does not contest the admission of information concerning his past sexual crimes, he submits that the admission of his institutional conduct reports, his juvenile record and his nonsexual adult criminal record was "unduly prejudicial" and "irrelevant." He is mistaken.

¶15 As noted, the issues that needed resolution in Franklin's trial were whether he had a mental disorder, whether he was convicted of sexually violent crimes, and whether he was predisposed to commit future acts of sexual violence. Expert witnesses were required in order to accurately assess whether Franklin had a mental disorder or the predisposition to commit acts of sexual violence. These witnesses were obligated to examine Franklin's entire psychiatric history and his criminal past in order to render an intelligent expert opinion as to Franklin's current mental health and to assess the future risk he posed to the public. Thus, all of Franklin's criminal and psychiatric past was relevant to such a determination. *See* WIS. STAT. § 904.01 (stating that evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence).

¶16 While this information was prejudicial, as is much evidence submitted during a trial, it was not unfairly prejudicial. In ***State v. Mordica***, 168 Wis. 2d 593, 605, 484 N.W.2d 352 (Ct. App. 1992), this court explained that evidence is unfairly prejudicial only if it "would have a tendency to influence the outcome by improper means or if it appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish or otherwise causes a jury to base its decision on something other than the established propositions in the case."

Clearly, the evidence admitted in Franklin's trial did not influence the jury by improper means as the jury was entitled to know the basis for the experts' opinions. Franklin's past psychiatric and criminal history were very pertinent to the question to be answered by the jury. In sum, we are satisfied that the trial court properly admitted this evidence.

C. The trial court properly exercised its discretion in denying Franklin's proposed jury instruction.

¶17 Franklin claims his requested jury instruction, explaining that he could be committed under the civil commitment statutes if he was found not to be a proper candidate for a ch. 980 commitment, was improperly denied. As noted, at the jury instructions conference, Franklin's attorney requested a special instruction setting forth the burden of proof for a civil commitment and implying that Franklin could be committed civilly if not committed under ch. 980. The trial court declined to give the instruction, finding that it would mislead the jury. Franklin's attorney argued that the instruction was needed because a State expert witness testified that he believed Franklin would pose a higher risk to reoffend when his parole ended in January 2003. On appeal, Franklin claims that the failure to give this special instruction "tainted the fact-finding process by giving the jury the unfair impression that a seriously mentally ill man would be released if not committed." He also argues that fairness dictated that the jury know that "release without controls was not the alternative to commitment." We are satisfied that the trial court properly exercised its discretion in refusing to give the proposed instruction.

¶18 A trial court has wide discretion in giving instructions to a jury. ***State v. Coleman***, 206 Wis. 2d 199, 212, 556 N.W.2d 701 (1996). On review, this court is limited in its review of a trial court's jury instruction decision. We may

only review the jury instruction to see if the trial court acted within its discretion when it refused to give a requested instruction. *See* ***State v. Randall***, 222 Wis. 2d 53, 59, 586 N.W.2d 318 (Ct. App. 1998). The instructions must, however, fully and fairly inform the jury of the applicable principles of law. *See* ***id.*** at 59-60. As long as the given instructions adequately advise the jury as to the law it is to apply, the trial court has discretion to decline to give other instructions, even though they may properly state the law to be applied. *See* ***Anderson v. Alfa-Laval Agri, Inc.***, 209 Wis. 2d 337, 345, 564 N.W.2d 788 (1997). Moreover, if the trial court erroneously refused to give a proper instruction, a new trial will not be ordered unless the trial court's error was prejudicial. ***Id.*** An error is prejudicial only if it appears that the result would have been different had the error not occurred. ***Id.***

¶19 Here, the trial court properly exercised its discretion in refusing to give the proposed instruction. The instruction was not critical to any issue the jury had to decide. Neither proof of the likelihood of Franklin's being civilly committed, if released, nor the burden of proof required under a civil commitment, was necessary to determine whether the State satisfied the criteria under ch. 980 to commit Franklin as a sexually violent person.

¶20 Additionally, the fact-finding process was not tainted by Dr. Doren's testimony that he considered the possible end of Franklin's parole as a factor in his risk assessment. Franklin's future risk to the public was a proper and relevant area of inquiry. Contrary to Franklin's suggestion, fairness did not demand that alternatives to a ch. 980 commitment be known to the jury. Indeed, as the trial court concluded, giving the requested instruction might well have misled or confused the jury as to its duties in this case.

D. No due process or equal protection violation occurred when the legislature amended ch. 980.

¶21 Franklin contends that the change in the law mandating that he be ordered into institutional care and outlawing the option of conditional supervision into the community violates both due process and equal protection. He argues that because a person committed under ch. 51 or under WIS. STAT. § 971.17 can be conditionally released, this disparity in treatment violates the due process and equal protection clauses of the United States Constitution.

¶22 The issue of whether the passage of 1999 Wisconsin Act 9 violates the equal protection clause has been decided by ***State v. Williams***, 2001 WI App 263, 249 Wis. 2d 1, 637 N.W.2d 791 (holding that the amendments to ch. 980 do not violate the principles of equal protection). Additionally, in ***State v. Rachel***, 2002 WI 81, 254 Wis. 2d 215, 647 N.W.2d 762, our supreme court rejected the claim that the amendments to ch. 980 violate substantive due process. Both of these cases are controlling legal precedent. Consequently, Franklin's arguments fail.

F. No new trial required in the interest of justice.

¶23 Finally, Franklin requests a new trial in the interest of justice. Inasmuch as we find no fault with the procedure or trial that led to his commitment, we decline his request.

¶24 Based upon the foregoing reasons, we affirm the trial court's judgment.

By the Court.—Judgment affirmed.

Recommended for publication in the official reports.

¶25 FINE, J. (*concurring*). I join in the result of this appeal and in all of the Majority Opinion except subpart B of part II. This is why:

¶26 First, WIS. STAT. RULE 904.04(2) has nothing to do with this case, other than being raised by Franklin in an attempt to overturn his commitment under WIS. STAT. ch. 980. *See* ***State v. Wolfe***, 2000 WI App 136, ¶¶35–42, 246 Wis. 2d 233, 255–258, 631 N.W.2d 240, 250–252. As we recognized in ***Wolfe***:

> Diagnoses of a mental disorder and dangerousness are directly foretold through past conduct. The jury needed to consider evidence of relevant past conduct to determine whether Wolfe had a mental disorder which predisposed him to commit acts of sexual violence and whether there was a substantial probability that he would commit acts of sexual violence in the future. "[P]revious instances of violent behavior are an important indicator of future violent tendencies." ***Kansas v. Hendricks***, 521 U.S. 346, 358 (1997) (citation omitted).
>
> The use of an individual's conduct and behavioral history and their effect on treatment is suitable in a WIS. STAT. ch. 980 commitment case. *See* ***State v. Adams***, 223 Wis. 2d 60, 73, 588 N.W.2d 336 (Ct. App. 1998), *review denied*, 225 Wis. 2d 488, 594 N.W.2d 382 (Wis. Apr. 6, 1999) (No. 96–3136). As trial counsel testified at the posttrial hearing:
>
> > For the most part, the [§] 904.04 analysis applies more appropriately to a strictly criminal situation. It's designed to prevent convictions based on past behavior and the identity of the current offense to that past behavior. That [ch.] 980 trial is a different situation than civil. It's not looking at a particular specific behavior at that moment in trying to decide if somebody did it or didn't. It's a forward looking, is he likely to offend in the future type situation, and that — and when you get reports from

> the experts that, unfortunately, open the door to that type of evidence, it's likely that you're going to have to deal with it in some fashion. The probative, prejudicial cumulative waste of time analysis is the appropriate I think.
>
> We agree. The appropriate inquiry is whether the evidence is relevant and whether its probative value is outweighed by the risk of undue prejudice. *See* WIS. STAT. §§ 904.01, 904.03.

Id., 2000 WI App 136 at ¶¶37–39, 246 Wis. 2d at 255–256, 631 N.W.2d at 251. That said, the disputed evidence here passes muster.[2]

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[2] I agree with Judge Schudson's concurrence that the paraphrase of WIS. STAT. RULE 904.03 (evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice") in ***State v. Wolfe***, 2000 WI App 136, ¶39, 246 Wis. 2d 233, 256, 631 N.W.2d 240, 251, is unfortunate and does not reflect accurately the rule's nuances.

Wolfe holds that RULE 904.04(2) does not apply under the circumstances presented by this appeal. In light of part II of Judge Schudson's concurrence, I'll explain further.

WISCONSIN STAT. RULE 904.04(2) is a rule of exclusion, with built-in exceptions. It commands, as the general mandate, that a person's "other acts" may not be used to show that he or she "acted in conformity therewith." This is a prohibition against "propensity" evidence. ***State v. Fishnick***, 127 Wis. 2d 247, 256, 378 N.W.2d 272, 277 (1985). The propensity evidence is excluded not because it is not relevant, but, rather, because it is *too* relevant; generally, once a burglar always a burglar. Letting a jury know that a defendant charged with burglary has been convicted of other burglaries would swamp the jury's ability to fairly assess the case.

RULE 904.04(2) also recognizes that evidence of other acts might be admissible for a purpose *other than showing propensity*. Thus, the non-exclusive list: "This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." The phrase "other purposes" includes *only* evidence not used to prove propensity. ***State v. Sullivan***, 216 Wis. 2d 768, 783, 576 N.W.2d 30, 37 (1998) ("Although Wis. Stat. § (Rule) 904.04(2) precludes the admission of character or propensity evidence, it permits the admission of other acts evidence if its relevance does not hinge on an accused's propensity to commit the act charged."). To read the phrase "other purposes" as a backdoor entry to propensity evidence, however, as Judge Schudson's concurrence does, would, in my view, obliterate the rule. But where propensity *is the focus* of the action — as it is here — RULE 904.04(2) simply does not apply, and we should not resort to sleight-of-hand to make it fit. That is ***Wolfe***'s teaching; it is a teaching that both the lead opinion and Judge Schudson's concurrence ignore.

¶27 Second, the Majority's holding that the evidence of things that Franklin has done in his life was admissible so the jury could "know the basis for the experts' opinions," Majority at ¶16, is unduly restrictive.[3] Evidence of things that Franklin has done in his life is relevant *directly* — and it may be used by the fact-finder (either judge or jury) to assess whether a Chapter 980 commitment is warranted, *see* ***Wolfe***, 2000 WI App 136 at ¶¶37–39, 42, 246 Wis. 2d at 255–256, 257–258, 631 N.W.2d at 251, 252; it is not, as the Majority seems to hold, limited to use by the fact-finder in weighing expert opinions.[4]

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[3] I use the phrase "evidence of things that Franklin has done in his life" rather than "other acts evidence" because I believe that using the term "other acts evidence" clouds the analysis because of its association with WIS. STAT. RULE 904.04(2).

[4] Properly qualified expert witnesses may base their opinions on anything on which similar experts reasonably rely in forming their opinions, irrespective of whether those matters are admissible as evidence. WIS. STAT. RULE 907.03. Moreover, a trial court may properly exercise its discretion and permit the jury to learn the bases for an expert's opinions even though the matters upon which the expert relied are not admissible as substantive evidence. WIS. STAT. RULE 907.05; ***State v. Pharm***, 2000 WI App 167, ¶¶29–31, 238 Wis. 2d 97, 120–122, 617 N.W.2d 163, 173–174; ***State v. Weber***, 174 Wis. 2d 98, 106–108, 496 N.W.2d 762, 766–767 (Ct. App. 1993); *cf.* FED. R. EVID. 703 ("Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.").

¶28 Accordingly, I respectfully concur.

¶29 SCHUDSON, J. (*concurring*). I do not join in section II. B. of Judge Curley's majority opinion. And while I agree with the essence of Judge Fine's concurring opinion, I write separately to: (1) note the significantly incorrect terminology in ***State v. Wolfe***, 2000 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240 (quoted in Judge Fine's opinion); and (2) offer what I think may be a more precise statutory approach leading to the conclusion that WIS. STAT. § 904.04(2) does not preclude the other-acts evidence in this case.

I.

¶30 In many trials, it is not uncommon for attorneys to argue that evidence should be excluded because it is "prejudicial" or "unduly prejudicial," or because its probative value is outweighed by its prejudicial effect. WISCONSIN STAT. § 904.03, however, allows for no such argument; in part, it provides: "Although relevant, evidence may be excluded if its probative value is *substantially* outweighed by the danger of *unfair* prejudice." (Emphasis added.)

¶31 In many appeals, attorneys repeat these same dead-end arguments. Unfortunately, appellate courts sometimes use the same misleading language. For example, in ***Wolfe***, this court, stating that "[t]he appropriate inquiry is whether the evidence is relevant and whether its probative value is *outweighed* by the risk of *undue* prejudice," ***id.***, 2002 WI App 136 at ¶39 (emphasis added), echoed two common errors.

¶32 These differences are far more than semantic. WISCONSIN STAT. § 904.03, as written but not as misquoted, correctly recognizes that, of course, relevant and highly probative evidence often is "prejudicial" and, in the estimation of the protesting party, may seem "unduly prejudicial." But the evidence also may be fair. And § 904.03, as written but not as misquoted, correctly recognizes that if the balance between probative value and unfair prejudice is close, the evidence *is* admissible (assuming, of course, that "confusion of the issues, or misleading the jury, or … considerations of undue delay, waste of time, or needless presentation of cumulative evidence" is not involved) because its probative value is not "*substantially* outweighed by the danger of *unfair* prejudice." *See* WIS. STAT. § 904.03 (emphasis added).

II.

¶33 WISCONSIN STAT. § 904.04(2) in part provides: "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*." (Emphasis added.) In this case, the challenged evidence—Franklin's juvenile record, nonsexual adult criminal record, and institutional conduct reports—was not introduced to show that Franklin "acted in conformity" with his juvenile delinquency or adult nonsexual criminal conduct, or that he "acted in conformity" with his institutional behavior. The evidence was admissible because it was relevant, as Judge Fine explains, because its probative value was not substantially outweighed by the danger of unfair prejudice, and because it was not precluded by WIS. STAT. § 904.04(2), given that it was "offered for other purposes," *see* § 904.04(2)—purposes clearly relevant to the issues in a chapter 980 action.

¶34 Accordingly, I respectfully concur.