

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 2009

David R. Schanker
Clerk of Court of Appeals

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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. 2008AP1854-CR

Cir. Ct. No. 2006CF1111

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LEE EDWARD JONES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. MCMAHON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Lee Edward Jones appeals from a judgment of conviction for multiple counts of first- and second-degree sexual assault of a child. The issue is whether displaying eleven poster-sized photographs (“posters”) of the alleged victims, each containing the name, a description of the charges, and the

dates and whereabouts of each alleged offense was unfairly prejudicial, thereby denying Jones a fair trial. We conclude that the trial court properly exercised its discretion in allowing the display of these posters throughout the trial as pedagogical devices to assist the jury in “keep[ing] track” of the multiple charges and victims, and to avoid juror confusion. Therefore, we affirm.

¶2 Jones was charged with eleven counts of various sexual offenses: eight counts of first-degree sexual assault of a child, two counts of second-degree sexual assault of a child, and one count of child enticement. Prior to the prosecutor’s opening statement, she displayed eleven posters, ten of which contained photographs of each alleged victim who would testify. Each poster contained the following information: (1) the alleged victim’s name; (2) the charged offense involving that particular alleged victim; (3) the date of the charged offense; and (4) where the charged offense occurred. Although these posters were displayed to the jury throughout the entire trial, they were only referred to once, during the prosecutor’s rebuttal (closing) argument.

¶3 The jury found Jones guilty of each offense except child enticement; the trial court imposed ten consecutive twenty-year sentences, each comprised of equal ten-year periods of initial confinement and extended supervision. Jones appeals, challenging the ruling that allowed the State to display the eleven posters throughout the trial.

¶4 WISCONSIN STAT. § 906.11(1) (2007-08) empowers the trial court with discretion to “exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence ... to ... (a) [m]ake the ... presentation effective for the ascertainment of the truth[;] (b) [a]void needless consumption of time[; and] (c) [p]rotect witnesses from harassment or undue

embarrassment.”¹ This statutory section authorizes the admissibility of pedagogical devices to “make the ... presentation effective for the ascertainment of the truth.” *See id.*; *State v. Olson*, 217 Wis. 2d 730, 742, 579 N.W.2d 802 (Ct. App. 1998). “These standards apply to a trial court’s discretionary decision to admit a summary chart ... under § 906.11(1).” *Olson*, 217 Wis. 2d at 737. The admissibility of pedagogical devices often “turn[s] on the facts of each case,” and thus, “remains within the trial court’s discretion.” *Id.* at 740.

¶5 Immediately prior to preliminary instructions and opening statements, Jones’s trial counsel preserved his objection to the poster display.

[Defense Counsel]: I just want to make a record. I have no problem with the pictures being up during openings as they are now, but I would object to them being up throughout the trial as they’re unduly prejudicial and it gives undue weight to the number of charges and it’s – They’re constantly in front of the jury and that they’re unduly prejudicial.

....

They’re on the wall opposite the jury box, so the jury would have a constant reminder. So the weight of the case and the number of victims involved and what the charges are for each one, it puts undue weight and prejudicial weight on the number of cases.

....

[The Prosecutor]: ... *State v. Olson* ... stands for the fact that demonstrative evidence can be used, especially if it helps or assists the jury to keep track of the evidence that’s used in a trial, especially of this magnitude. ...

....

¹ All references to the Wisconsin Statutes are to the 2007-08 version.

This case involves eleven counts, eight of which are first-degree sexual assault of a child, two of which are second-degree, and the child enticement count. There's going to [be] lots and lots of testimony, not only from the victims, but from police officers and detectives involving their investigation and involving their investigation victim by victim. This is a way to help them [the jury] keep track of all of that information.

....

[Defense Counsel]: That's what essentially this is, they're having a visual display of the information, which they wouldn't be allowed to have, and then you add to it photographs, which offers nothing in terms of evidence or relevance. They're going to see the kids here in court, and it's not relevant what they looked like back then.

....

The Court: The discussion relates to eleven poster-sized pieces of paper that have pictures in most instances of the victims, the alleged victims at the time of the offense as well as currently.

I look at this, and I look at the number of witnesses, the number of counts, and under the instructions each count has to be considered separately, each is a separate offense, and the jury is going to have to keep track of each one separately, so there's a concern that all of the testimony will meld together, so I think something like this is a good way of keeping all of those counts separate and indicating to the jury that they are separate individuals and to keep track of them.

....

... so I think to help them follow the testimony as it relates to each of these witnesses, it's helpful, demonstrative evidence to avoid having the jury become confused, and I will permit it.

¶6 Preliminarily, the posters were not offered or received as evidence; they were referred to only in passing during the prosecutor's rebuttal in closing argument. They were not marked as exhibits and are not in the appellate record. Both parties describe them in the same manner, and Jones does not object to their

depiction of the alleged victims, or the accuracy of the displayed information; he objects to their display throughout the trial and to their characterization as pedagogical because they were not used as teaching devices.

¶7 The trial court did not misuse its discretion in allowing the poster display to assist the jury in identifying and following the evidence of multiple witnesses and charges. *See* WIS. STAT. § 906.11(1); *Olson*, 217 Wis. 2d at 740. As the trial court reasoned, it allowed the poster display “to help [the jurors] follow the testimony as it relates to each of these witnesses, it’s helpful, demonstrative evidence to avoid having the jury become confused.” The trial court’s explanation is reasoned and reasonable, and is therefore a proper exercise of discretion.

¶8 Jones contends that the poster display is unfairly prejudicial; however, there is nothing in the display as described that is inflammatory, it served merely as an organizational tool for the jury. Jones does not object to the display’s accuracy, but to its existence, as “a constant reminder” to the jury of the number of charges and alleged victims. The trial, however, is a constant reminder of the multiple charges and the alleged victims; the poster display is an identification and organizational tool that the trial court explained would assist the jury in “keep[ing] track” of the evidence, and preventing confusion over the multiple (eleven) charges and alleged victims.

¶9 The poster display is admissible as a pedagogical device pursuant to WIS. STAT. § 906.11(1). *See Olson*, 217 Wis. 2d at 738-42. Although this poster display is somewhat different than that also admitted in *Olson*, we rely on *Olson* insofar as it confirms: (1) the use of a pedagogical device to identify and organize the evidence as it is presented in a case involving multiple charges and multiple

victims; and (2) that the key to appellate review of this type of ruling is the trial court's exercise of discretion. *See id.* at 740. In comparing the substance of the poster displays, the present one is less problematic than that in *Olson*, which involved the prosecutor's summary of the testimony, as opposed to a mere categorization of each charge by victim, date and place.² The trial court properly exercised its discretion in explaining why it allowed the poster display as a pedagogical device. *See* § 906.11(1); *Olson*, 217 Wis. 2d at 739-41.

By the Court.—Judgment affirmed.

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

² In *State v. Olson*, 217 Wis. 2d 730, 579 N.W.2d 802 (Ct. App. 1998), the prosecutor placed check marks near certain parts of the chart depending upon the testimony. *See id.* at 733-34. In *Olson*, the defense unsuccessfully objected to testimonial discrepancies and alleged inaccuracies in the chart. *See id.* at 733-36. Jones's contention that no cautionary instruction was given as it was in *Olson* is not persuasive because the chart in *Olson* was received in evidence as an exhibit and the trial court cautioned the jurors not to rely on the chart summarizing the testimony, but to rely strictly on their own recollection of the evidence and the testimony. *See id.* at 736. Jones did not object to the poster display as inaccurate, but as "a constant reminder" of the number of charges and victims.

