COURT OF APPEALS DECISION DATED AND FILED

October 1, 2002

Cornelia G. Clark
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 No. 02-0470-CR **Cir. Ct. No. 00 CM 7598**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRYANT E. CARTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed*.

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

¶1 PER CURIAM. Bryant E. Carter appeals from a judgment entered after a jury found him guilty of fourth-degree sexual assault and disorderly conduct, contrary to WIS. STAT. §§ 940.225(3m) and 947.01 (1999-2000).[1] He

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

raises three issues: (1) whether the trial court erred in allowing the prosecutor to elicit from the victim that she was a theology student at Marquette University intending to go into youth ministry; (2) whether the trial court erred when it refused to allow a handwritten defense exhibit to be sent into the deliberation room; and (3) whether the evidence was insufficient. Because the trial court did not erroneously exercise its discretion when it allowed into evidence the background information about the victim or when it excluded the summary exhibit, and because the evidence was sufficient to support the conviction, we affirm.

I. BACKGROUND

¶2 Katherine Kornowski reported to police that on July 21, 2000, Carter was following her in his car while she was driving her car on the freeway. He kept motioning for her to pull off the freeway and mouthed: "What's up?" When she exited I-94 at Rawson Avenue, Carter followed. The stoplight just turned red, so she stopped. Carter then exited his vehicle and came over to Kornowski's car. He stated: "Hey baby, get out of your car, let me have a good look at you." He also asked for her phone number and said he wanted to give her a hug. She scribbled a fake phone number on a piece of paper and gave it to him. He then reached into her vehicle, put his right arm around the back of her neck, and grabbed her right breast. He then put his left hand on her left breast and squeezed. She yelled: "Get the fuck away from me!" Her car started rolling forward, he let go, and she stepped on the gas. She let him pass and then followed him to a nearby hotel, where he stopped. She got his license plate number and left.

¶3 Carter was later charged with the crimes noted above and the case was tried to a jury. Carter filed a motion in limine seeking to exclude information

that Kornowski was a theology student fearing that this would make her version of the incident more credible. The trial court denied the motion. Carter testified that he did encounter Kornowski on the freeway on the day she stated. However, he stated that it was a "road rage" type of incident. He said that Kornowski cut him off, causing him to swerve, hit a pothole, and almost run into the curb. He then honked his horn angrily at her. He said he then pulled into the hotel lot to check his car and Kornowski followed him and asked if she hit his car. He yelled at her and said she almost wrecked his car. He said they then exchanged phone numbers.

¶4 The jury believed Kornowski's version of events and found Carter guilty on both counts. Carter now appeals.

II. DISCUSSION

A. Admission of Testimony.

¶5 Carter first contends that the information about Kornowski's theology studies and youth ministry plans was erroneously admitted in violation of WIS. STAT. § 906.10, which states: "Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced." We disagree.

¶6 The trial court has broad discretion in determining the admissibility of evidence. ***State v. Oberlander***, 149 Wis. 2d 132, 140, 438 N.W.2d 580 (1989). Our review is limited to whether the trial court erroneously exercised its discretion. ***Id.*** at 142. We will uphold the evidentiary decisions as long as the trial court made a reasonable decision based on the pertinent facts and the correct law. ***Id.***

¶7 Here, the testimony was admitted as useful contextual background information. Kornowski merely advised the jury of her current studies and plans for future occupation. She was also allowed to testify as to current volunteer activities. The trial court determined that this information was pertinent as background general occupational type of information and was not being used to bolster Kornowski's credibility based on her religious beliefs. This was a reasonable determination and did not constitute an erroneous exercise of discretion.

B. Exhibit.

¶8 Carter next contends the trial court erroneously exercised its discretion when it refused to allow the jury to have an exhibit prepared by defense counsel. We reject this contention.

¶9 A trial court has broad discretion in determining whether or not to send exhibits to the jury during deliberations. ***State v. Hines***, 173 Wis. 2d 850, 858, 496 N.W.2d 720 (Ct. App. 1993). We will not disturb the trial court's determination as long as it is reasonable and based on the pertinent facts and law. ***Id.***

¶10 Here, the proffered exhibit was a handwritten summary of the events, made by defense counsel during the trial testimony of Kornowski. The trial court was concerned about sending it to the jury because it was not a complete rendition of the testimony, and included only certain words and actions. The court determined that sending the exhibit might cause undue focus on certain parts of the testimony over others. Further, the jury was allowed to take its own notes when it heard the testimony. The trial court's decision was reasonable and did not constitute an erroneous exercise of discretion.

¶11 Carter cites ***State v. Olson***, 217 Wis. 2d 730, 579 N.W.2d 802 (Ct. App. 1998), in support of his argument that handwritten contemporaneously prepared exhibits may be submitted to the jury. The exhibit in the ***Olson*** case, however, is distinguishable from the exhibit proffered by Carter. The exhibit in ***Olson*** was a demonstrative chart prepared because the case was complex, involving two defendants, ten victims and multiple charges and different forms and degrees of sexual assault. ***Id.*** at 739. The chart did not contain statements summarizing testimony. Rather, it contained check marks next to each type of sexual contact the defendants made with the victimized children in an effort to track each sexual contact. ***Id.*** at 733.

¶12 Here, Carter's counsel made his own "transcript" of Kornowski's statement during cross-examination. The situations are very different. Accordingly, in ***Olson***, the exhibit was properly admitted and here, the proffered exhibit was properly excluded.

C. Insufficient Evidence.

¶13 Finally, Carter contends there was insufficient evidence to support his convictions. We disagree.

¶14 Our standard in reviewing this claim is limited. We determine whether the evidence, viewed most favorably to the State and the conviction, "is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Ray***, 166 Wis. 2d 855, 861, 481 N.W.2d 288 (Ct. App. 1992) (citation omitted). We will affirm a conviction if the trier of fact, acting reasonably, could be convinced beyond a reasonable doubt by evidence it is entitled to accept as true. ***State v. Teynor***, 141 Wis. 2d 187, 204, 414 N.W.2d 76

(Ct. App. 1987). We will not substitute our judgment for that of the trier of fact unless "the evidence supporting the jury's verdict conflicts with nature or the fully established facts, or unless the testimony supporting and essential to the verdict is inherently and patently incredible." ***State v. Sharp***, 180 Wis. 2d 640, 659, 511 N.W.2d 316 (Ct. App. 1993).

¶15 Here, Kornowski's testimony clearly provides a sufficient basis to support the convictions. Carter's argument is simply that there is insufficient evidence because Kornowski's testimony was not credible. The jury, however, determined that Kornowski was credible. We find nothing in the record to disturb the jury's credibility determination.

By the Court.—Judgment affirmed.

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