COURT OF APPEALS
DECISION
DATED AND FILED

October 13, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP911-CR **Cir. Ct. No. 2009CM97**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SALVADOR CRUZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed*.

¶1 NEUBAUER, P.J.[1] Salvador Cruz appeals from a judgment of conviction for disorderly conduct in violation of WIS. STAT. § 947.01. The

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

conviction stems from his conduct toward a Walworth County Department of Health and Human Services (DHHS) case manager. Cruz argues that the trial court erred when it admitted evidence and argument at trial relating to the actions taken by DHHS following the alleged disorderly conduct. Cruz argues that DHHS's actions, without evidence as to the time frame in which they were taken, are not relevant. He also argues that, even if relevant, the probative value of the evidence was substantially outweighed by the likelihood that it would mislead and confuse the jury. We reject Cruz's arguments. We conclude that the trial court properly exercised its discretion in admitting the evidence. We therefore affirm the judgment of the trial court.

BACKGROUND

¶2 Cruz's conviction for disorderly conduct stems from an incident on February 26, 2009, after Cruz appeared before the trial court in a termination of parental rights proceeding. According to the testimony at Cruz's trial, Cruz was accompanied by his attorney and an interpreter; Danielle Garson, the case manager assigned to Cruz's case, appeared on behalf of DHHS. During this proceeding, the trial court ordered Cruz to complete a medical genetics form. When the court adjourned, Garson walked out with Cruz, the interpreter, and Cruz's attorney, Helen Mullison. According to Garson, Cruz commented, "You know what, Ms. Garson? You can wait for me. I have things to do. I'll send these forms in for you on Monday." In response, Garson, Mullison and the interpreter explained to Cruz that it had to be done immediately. Garson testified that Cruz responded, "Well move. Move. Let's go. Let's go." At the same time, Garson felt Cruz push on her bag, effectively pushing her through the doors of the courtroom.

¶3 The group went to a side room with a small table; Garson sat on one side and Cruz and the interpreter sat on the other. Cruz asked where to sign the form and Garson replied that he needed to fill out the whole form, not just sign it. According to Garson, Cruz then stated, "You know, you can wait. I need to meet with my attorney now," and got up to leave. Mullison and the interpreter again told him he needed to complete the forms. Garson testified that when Cruz had completed the first page of about eight to eleven pages, he said in a loud voice, "You will not take my child from me. You will not win. I will have your head"; he slammed his hand on the table and told her he would have her job. Garson testified that she "was in shock." She further testified that: "I didn't even know what to think. Nothing like that had ever happened to me. I never had a client react to me that way before."

¶4 Garson stood up and walked back into the courtroom where Deputy Duane Warrenburg was standing. Garson asked him if he could come stand in the room with her while Cruz filled out the form "because he was getting unruly with [her]." Warrenburg returned with Garson to the room where Cruz completed the forms. There was no other interaction at the courthouse. Garson was escorted by Warrenburg out of the building.

¶5 Garson returned across the street to the DHHS offices and told her supervisor, Pat Weeden, what had happened. The two went to Weeden's office, where Weeden discovered a voice mail from Cruz. Garson and Weeden listened to Cruz's message. Garson testified that Cruz "was very irate. He was yelling. He was saying: I want her off my case. I do not want to see her ever again. If I see her, something bad will happen. I don't know what but something bad will happen to her if I have to see her again." After hearing the message, Garson said she felt scared, nervous, and she did not know what he was capable of doing.

¶6 Garson went back to her office and discovered a message Cruz left for her. This message was left approximately ten minutes after the message left on Weeden's voice mail. Garson described Cruz as talking very quickly and with a raised voice. According to Garson, Cruz indicated he did not want to see her ever again, that she had an ugly face and ugly attitude and that she should not be controlling people's lives. Garson testified that, according to her case notes, Cruz also told her, "You mess with me, I'll mess with you. I'll make your life miserable." Garson contacted the Walworth County Sheriff's Department in order to make a statement regarding the situation.

¶7 Garson was subsequently removed from the case and a male caseworker was assigned. Other precautions were also taken: police were assigned to patrol the building, the DHHS building went on lockdown (only two main entrances were kept open), color photos of Cruz were posted at the reception desk at both ends of the human services building and a mass email was sent out with his picture, stating if anyone sees him to contact the sheriff's department.

¶8 On February 26, 2009, approximately six and one-half hours after the incident with Garson, Deputy Gilbert Maas went to Cruz's home and arrested him. Maas reported that Cruz was "irate and confrontational." Cruz spent six days in jail before posting bond on March 4, 2009. Following a jury trial on September 15, 2009, Cruz was found guilty of disorderly conduct. Cruz was sentenced on October 7, 2009, to one year of probation with ninety days of local jail time with Huber privileges stayed. Cruz appeals.

DISCUSSION

¶9 Cruz raises two challenges on appeal. He first argues that the trial court erroneously exercised its discretion when it allowed the State to introduce

evidence of an actual disturbance at DHHS without presenting evidence as to its proximity to Cruz's conduct. Cruz contends that absent evidence as to proximity, DHHS's response is irrelevant. Cruz next contends that the evidence, if relevant, was erroneously admitted because its probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury. We reject Cruz's arguments.

¶10 The admissibility of evidence is within the trial court's discretion. ***State v. Alexander***, 214 Wis. 2d 628, 640, 571 N.W.2d 662 (1997). In reviewing an exercise of discretion, we examine the record to determine whether the trial court logically interpreted the facts, applied the proper legal standard, and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach. ***State v. Keith***, 216 Wis. 2d 61, 69, 573 N.W.2d 888 (Ct. App. 1997).

¶11 Cruz was convicted of disorderly conduct, a violation of WIS. STAT. § 947.01. The conviction requires the State to prove two elements beyond a reasonable doubt: (1) the actor engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud, or similar disorderly conduct and (2) the actor's conduct occurred under circumstances where such conduct tends to cause or provoke a disturbance. WIS JI—CRIMINAL 1900; *see also* § 947.01. "The design of the disorderly conduct statute is to proscribe substantial intrusions which offend the normal sensibilities of average persons or which constitute significantly abusive or disturbing demeanor in the eyes of reasonable persons." ***State v. Zwicker***, 41 Wis. 2d 497, 508, 164 N.W.2d 512 (1969).

¶12 Cruz contends that evidence of actions taken by DHHS is not relevant because the jury was never provided a time line showing the proximity of DHHS's response to Cruz's conduct. The criterion of relevancy under WIS. STAT.

§ 904.02 is whether the evidence sought to be introduced would shed any light on the subject of inquiry. *See* ***State v. Lindh***, 161 Wis. 2d 324, 348, 468 N.W.2d 168 (1991). Cruz cites to the supreme court's decision in ***State v. A.S.***, 2001 WI 48, ¶40, 243 Wis. 2d 173, 626 N.W.2d 712, in which the court stated that "the emphasis of the disorderly conduct statute is not on the reaction of the listener or observer, but instead *on the conduct itself in light of the circumstances*" in which it occurs. (Emphasis added.) Cruz relies on this language to support his contention that the relevance of the disturbance at DHHS "is especially diminished when that disturbance amounts to no more than an attenuated reaction happening outside the circumstances in which the conduct originally occurred." We disagree.

¶13 ***A.S.*** instructs that "[i]n addition to considering the potential effects of a defendant's conduct in disorderly conduct cases … prior cases also indicate that the actual effects of a defendant's conduct are probative." ***Id.***, ¶38; *see also* ***State v. Maker***, 48 Wis. 2d 612, 616-19, 180 N.W.2d 707 (1970) (citing to the officer's testimony regarding the effect of the defendant's conduct as support for the trial court's finding of guilt). Further, the ***A.S.*** court expressly rejected the notion that WIS. STAT. § 947.01 requires an immediate physical and visible reaction by those subject to the conduct. ***A.S.***, 243 Wis. 2d 173, ¶40. It considered evidence of an individual reporting the defendant's conduct to the police the day after it happened and the subsequent efforts by the police in conducting interviews regarding the defendant's threats to be probative. ***Id.***, ¶39. The court stated: "These actual effects of [the defendant's] conduct support our finding that his conduct tended to cause or provoke a disturbance." ***Id.***

¶14 Here, Garson testified that, as a result of Cruz's conduct at the courthouse, she was "in shock" and felt it necessary to request the presence of a deputy during the remainder of her meeting with Cruz. The evidence revealed that

Cruz's conduct continued after the meeting as he left voice mail messages with Garson and her supervisor. The "actual effect" of Cruz's conduct included the steps taken by DHHS to ensure the safety of its employees. Contrary to Cruz's contention, ***A.S.*** holds that such evidence is probative. ***Id.*** The lack of a measure of time in which the responses occurred does not diminish relevancy, but only the persuasiveness of the evidence. It is the jury's function to determine the weight to be given the evidence in light of its arguable attenuation from the circumstances in which the conduct occurred. ***State v. Fischer***, 2010 WI 6, ¶7, 322 Wis. 2d. 265, 778 N.W.2d 629 ("[Q]uestions of the weight and reliability of relevant evidence are matters for the trier of fact.").

¶15 Cruz also argues that, even if the evidence was relevant, it should have been excluded under WIS. STAT. § 904.03 because its probative value is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Cruz argues that by allowing evidence of DHHS's response to Cruz's actions, the jury may have concluded that Cruz's conduct was disorderly simply because it did cause a disturbance rather than whether his conduct was of the sort that tended to cause or provoke a disturbance. Cruz contends that this confusion outweighs any probative value offered by the evidence because there was already testimony by Garson and others stating that threats had been perceived and the circumstances in which the threats occurred. We reject Cruz's argument.

¶16 Whether a jury could deliver a verdict on the testimony without the reactions of the DHHS is not determinative of whether the evidence of the reactions should be admitted. The evidence undoubtedly aided the jury in determining the extent to which the actions of Cruz were perceived as a threat.

The danger of confusing the jury was minimal and did not outweigh the probative value of the evidence.

CONCLUSION

¶17 We conclude that evidence of DHHS's reaction to Cruz's conduct was both relevant and probative and that the trial court properly exercised its discretion by admitting such evidence. We therefore deny Cruz's request for a new trial and affirm the judgment.

By the Court.—Judgment affirmed.

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