**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**May 2, 2012**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2011AP974-CR** **Cir. Ct. No. 2008CF852**

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

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOSHUA T. CROUSE,**

**DEFENDANT-APPELLANT.**

APPEAL from a judgment of the circuit court for Eau Claire County: PAUL J. LENZ, Judge. *Affirmed.*

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. At age fourteen, Joshua T. Crouse was adjudicated delinquent for first-degree sexual assault of a child. He appeals from a judgment convicting him of failing to comply with Sex Offender Registry Program

registration requirements. Crouse challenges the State's efforts to show that he knew the registration requirement continued after he turned eighteen. We reject his arguments and affirm.

¶2 After his adjudication in 2004, Crouse was required to comply with Registry requirements for fifteen years beyond the term of his supervision. Compliance included an annual registration update requirement and notifying the Registry of any change of address. He last notified the Registry in October 2007, shortly after he turned eighteen. Crouse's noncompliance with his 2008 registration update led the State to file a complaint in December 2008.

¶3 The issue at trial was whether Crouse knowingly failed to register. Crouse testified that he thought his juvenile record would be expunged when he turned eighteen, negating the need for continuing registration, as he claimed had happened with his brother. The jury was not persuaded, and found him guilty.

¶4 Crouse appeals. He first challenges the admissibility of the initial sex offender registration form, annual update letters and a DOC chronology of events that the State used to prove that he knew his registration requirement survived his attaining age eighteen.[1] Crouse asserts that the State violated the

[1] The initial Sex Offender Registry Form, for example, stated in relevant part:

NOTICE OF REQUIREMENTS TO REGISTER

….

(continued)

criminal discovery statute, WIS. STAT. § 971.23 (2009-10),[2] by failing to disclose the documents until the day before trial. And even if the State's proffered reason for the late disclosure constituted good cause, he contends, the court's failure to grant other relief was an erroneous exercise of discretion.

¶5 We evaluate alleged violations of § 971.23(1) in three steps. *See* ***State v. Rice***, 2008 WI App 10, ¶14, 307 Wis. 2d 335, 743 N.W.2d 517. We first consider whether the State violated its statutory discovery obligations. *See* ***id.*** If yes, we next determine whether good cause was shown for the failure to make the required disclosure. ***Id.*** If so, the trial court may admit the evidence and grant other relief such as a recess or a continuance. *See* ***id.***; *see also* § 971.23(7m)(a).

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> Wisconsin Statute 301.45 requires the Wisconsin Department of Corrections to maintain the SEX OFFENDER REGISTRY PROGRAM (SORP) for individuals adjudicated, convicted, court ordered and/or committed under Wisconsin registerable criminal codes or comparable offenses in other states. This document is serving you notice that under Wisconsin Statute 301.45, you are required to comply with, and provide information/changes in your RESIDENCE, EMPLOYMENT, SCHOOL ENROLLMENT, AND/OR NAME CHANGE. The requirements of the Wisconsin Department of Corrections Sex Offender Reporting Program that you must follow are:
>
> 1. [Describes initial registration requirements]
>
> 2. You must continue to register with DOC-SORP for the time specified below:
>
>  A) During Community Supervision plus 15 years following the expiration date of your sentence, parole, probation or commitment if you were incarcerated, committed or supervised in Wisconsin.
>
> ….

[2] All references to the Wisconsin Statutes are to the 2009-10 version unless noted.

Finally, if the court admitted evidence it should have suppressed under § 971.23, we decide whether the admission was harmless. ***Rice***, 307 Wis. 2d 335, ¶14. Each step presents a question of law, which we review de novo. ***Id.***

¶6 The defense filed its discovery demand a week after the final status conference and eight days before trial; the State provided the documents on Monday, the day before trial. When the State sought to introduce the documents at trial, Crouse objected. Defense counsel argued that the late disclosure prevented her from reviewing them with Crouse before that very morning and, being the only documents tending to show that Crouse had been informed of his registration requirements, they were unduly prejudicial.

¶7 The prosecutor explained the last-minute disclosure: she had e-mailed the documents to defense counsel a week earlier, but then was snowed in at her home for three days. Only upon returning to the office on the Friday before the Tuesday trial did she discover that the e-mail transmission had failed. She advised defense counsel and delivered the documents to defense counsel on Monday. The trial court overruled the objection on the basis that Crouse's discovery was untimely.

¶8 WISCONSIN STAT. § 971.23(1) imposes on the State an obligation, "[u]pon demand" from the defense, to disclose required evidence "within a reasonable time before trial." The trial court did not make an explicit finding in that regard. We may assume, however, that a missing finding was determined in a manner that supports the decision. *See* ***Soma v. Zurawski***, 2009 WI App 124, ¶24, 321 Wis. 2d 91, 772 N.W.2d 724.

¶9 The trial court chastised both counsel for being "way too late" with their discovery demands, both of which postdated the final status conference. The

court observed that determining potential prejudice is far more difficult when the information is neither requested nor provided by the time of the status conference. With a timely demand and no disclosure by the time of the status conference, the court found, "it would have been a no[-]brainer, slam dunker" to exclude the evidence. We conclude that the court implicitly evaluated the timing of the disclosure in light of the timing of the demand and found it reasonable.

¶10 Crouse argues that there is no legal basis for the deadline the court imposed for discovery demands, however. Accordingly, he asserts, the State had to show good cause for the late disclosure, a standard not satisfied by prosecutorial negligence and inconvenience.

¶11 Once again, we conclude that, despite no express finding, the court implicitly found that the State showed good cause. Our independent review of the record also satisfies us the State met its burden of establishing good cause for the delay. *See* ***State v. Long***, 2002 WI App 114, ¶33, 255 Wis. 2d 729, 647 N.W.2d 884 (burden to show good cause rests with State; whether burden satisfied is question of law we review de novo). The defense's demand filed just eight days before trial, coupled with the State's prompt, but thwarted, effort to comply demonstrates good cause for the late disclosure.

¶12 Finally, while we see no error, we conclude that any error in admitting the evidence was harmless because Crouse's substantial rights were not affected. *See* WIS. STAT. § 805.18. Of the seven exhibits, Crouse had received and signed all but the DOC timeline. The defense reasonably should have recognized that the State would rely on those DOC records to prove that Crouse knew he still had to comply with Registry requirements. Crouse does not suggest why access to these documents depended on his getting them from the State or

what defense strategy he might have employed had he received them earlier. We decline to hold that the court misused its discretion by failing to grant other relief when Crouse did not request any. We conclude based on the totality of the circumstances, *see* ***State v. Harris***, 2008 WI 15, ¶45, 307 Wis. 2d 555, 745 N.W.2d 397, that the timing of the disclosure did not harm Crouse.

¶13 Crouse's next challenge involves evidence the State introduced during its rebuttal case that he again failed to update his residency information in 2009. Crouse asserts that evidence from after the charging period was unlawful other-acts evidence. *See* WIS. STAT. § 904.04(2)(a). We disagree.

¶14 Crouse testified that he learned in December 2008 that there was a warrant out for him for noncompliance and became aware that the registration requirement remained unless he actually got his record expunged, which required affirmative action on his part. He returned to get the warrant quashed and to talk to the Registry worker, after which, he testified, he believed he was in compliance. The State then re-called the Registry employee who testified that after Crouse was charged and re-established his compliance in December 2008, Crouse failed to report three address changes and to file his 2009 update.

¶15 Crouse objected that the Registry employee's testimony constituted other-acts evidence. The State responded that Crouse had "opened the door" when he testified about being in compliance, which would have left a false impression with the jury. The court overruled the objection and allowed the testimony.

¶16 A trial court's decision to admit other-acts evidence involves the exercise of discretion and will not be disturbed absent an erroneous exercise of discretion. ***State v. Hammer***, 2000 WI 92, ¶21, 236 Wis. 2d 686, 613 N.W.2d 629. The court employs a three-step analysis. ***State v. Sullivan***, 216 Wis. 2d 768,

772, 576 N.W.2d 30 (1998). It must determine whether the evidence is offered for an acceptable purpose, and, if so, whether it is relevant to that purpose. ***Id.*** If those queries are answered in the affirmative, the court then assesses whether the probative value of the evidence is substantially outweighed by the risk of unfair prejudice, confusion of the issues or waste of time. *See* ***id.*** at 772-73.

¶17 The trial court admitted evidence of Crouse's 2009 failure to register on the basis that it went to knowledge and absence of mistake or accident. *See* WIS. STAT. § 904.04(2)(a). Crouse contends that the court erroneously exercised its discretion because it failed to thoroughly apply the ***Sullivan*** analysis. That complaint fails because we may independently review the record to determine whether it provides an appropriate basis for the trial court's decision. *See* ***State v. Hunt***, 2003 WI 81, 263 Wis. 2d 1, ¶34, 666 N.W.2d 771.

¶18 Crouse then argues that the evidence does not survive the ***Sullivan*** test anyway because, rather than proving knowledge or absence of mistake, it tended to show that he essentially was a scofflaw who simply did not care about complying. Based on our review of the record, we disagree.

¶19 The court found that the evidence was offered for two acceptable purposes, satisfying step one of ***Sullivan***. As for step two, relevance, Crouse acknowledged at trial that when he got the warrant quashed in December 2008, it was clear to him that he needed to continue to register. We are satisfied that the evidence of his failure to update in 2009 was relevant to the material issue of whether Crouse knew that his Registry requirements continued after he turned eighteen and absence of mistake. That the evidence arose after the charging period does not diminish its relevance.

¶20 Crouse does not carry his burden of establishing that undue prejudice outweighs the probative value of the evidence. *See* ***Hunt***, 263 Wis. 2d 1, ¶53 (opponent of the evidence bears burden of proof on third step). Of course this evidence showing knowledge and absence of mistake was prejudicial to his defense; that's why it was probative. It was not unfairly prejudicial, however, such that it would cause the jury to base its decision on something other than the established propositions in the case. *See* ***Sullivan***, 216 Wis. 2d at 790. We agree that the evidence was properly admitted.

*By the Court*.—Judgment affirmed.

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