

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

June 4, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-0524-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**JAMES A. JACKSON,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Schudson, JJ.

PER CURIAM. James A. Jackson appeals from a judgment of conviction, after a jury trial, for first-degree intentional homicide while armed as a party to a crime, and armed robbery. He also appeals from an order denying his motion for postconviction relief. He raises three issues for review – whether the trial court erroneously exercised its discretion when it admitted evidence about his possession of guns implicated in the offenses; whether the trial court

erroneously exercised its discretion in excluding alleged evidence of a third party's guilt; and whether there was insufficient evidence to convict him of first-degree intentional homicide. We reject Jackson's arguments and affirm.

## I. BACKGROUND.

Police found Robert Walker's body in an alley near the 2500 block of North Teutonia Avenue in Milwaukee. Walker had been killed by a gunshot to the back of the neck. Police also found his automobile parked across the street in front of Charlotte Ward's residence. The car's passenger-side window was broken and the glove compartment was open.

Police arrested Jackson several weeks after Walker's homicide. Jackson was a passenger in a car detained by police in a routine traffic stop. The police found a "Tech-Nine" semiautomatic handgun, a .32 caliber revolver, and a .38 caliber revolver. Jackson was carrying twelve unfired rounds which matched those in the .32 caliber revolver. These weapons were implicated<sup>1</sup> in Walker's homicide and armed robbery.

Jackson, Duwon Watkins, and two juveniles, Robert J. and Terrell T., were implicated in the homicide and robbery; however, Jackson was tried separately. Further facts are discussed with the relevant issue raised by Jackson.

## II. ANALYSIS.

During his trial, the State introduced evidence concerning Jackson's arrest and the recovery of the weapons. Jackson argues on appeal that the trial court erroneously exercised its discretion when it admitted this evidence. We disagree.

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<sup>1</sup> Although a ballistics test was never ordered on the guns, they were identified by a co-defendant as the guns used in the homicide.

A trial court possesses great discretion in determining whether to admit or exclude evidence. *State v. Evans*, 187 Wis.2d 66, 77, 522 N.W.2d 554, 557 (Ct. App. 1994). Thus, we will not reverse such a determination unless the trial court erroneously exercises that discretion. *Id.*

Jackson miscasts the evidence in question as “other acts,” or *Whitty* evidence. See RULE 904.04, STATS.; *Whitty v. State*, 34 Wis.2d 278, 149 N.W.2d 557 (1967), *cert. denied*, 390 U.S. 959 (1968). This evidence is not “other acts” evidence, but rather, relevant evidence of the crimes. Jackson's possession of the guns, in connection with the testimony of a co-defendant linking the guns to Walker's homicide, was clearly relevant. See RULE 904.01, STATS. Further, this evidence helps to “complete the story of the crime.” *Holmes v. State*, 76 Wis.2d 259, 269, 251 N.W.2d 56, 61 (1977). As such, we cannot say that the trial court erroneously exercised its discretion in admitting this evidence. *Evans*, 187 Wis.2d at 77, 522 N.W.2d at 557.

Jackson next argues that the trial court erroneously exercised its discretion when it denied his attempt to introduce evidence of alleged third-party guilt. Once again, we review the trial court's determination under the exercise of discretion standard of review. See *id.*

Jackson sought to introduce evidence that Coleonn Ward or Derrick Loyde committed the murder.<sup>2</sup> In support of the introduction of this evidence, he presented the following argument and offer of proof.

Four days after Walker's homicide, police located Derrick Loyde in a car registered to Charlotte Ward. Police recovered a .22 caliber pistol from Loyde's lap. Simultaneously, the police entered the apartment building in front of which the car was parked, seeking Coleonn Ward, Charlotte's son. The police apprehended Coleonn leaving by a window. Further, police recovered a .22 caliber long rifle bullet in the siding of a wall near where Walker's body was found. There was no ballistics evidence that the bullet found near Walker matched the pistol recovered from Loyde.

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<sup>2</sup> The record and briefs are unclear as to whether Jackson was only implicating Loyde, Coleonn Ward, or both. We mention both for purpose of completeness.

Before any “proffered evidence of the alleged third persons's guilt is relevant,” there must be a “legitimate tendency” that the third person could have committed the crime. *State v. Jackson*, 188 Wis.2d 187, 195, 525 N.W.2d 739, 742 (Ct. App. 1994).

[T]o show a “legitimate tendency,” a defendant should not be required to establish the guilt of third persons with that degree of certainty requisite to sustain a conviction in order for this type of evidence to be admitted. On the other hand, evidence that simply affords a possible ground of suspicion against another person should not be admissible.... The “legitimate tendency” test asks whether the proffered evidence is so remote in time, place or circumstances that a direct connection cannot be made between the third person and the crime.

*State v. Denny*, 120 Wis.2d 614, 623-24, 357 N.W.2d 12, 17 (Ct. App. 1984).

The trial court ruled that the proffered evidence was “just speculation.” The trial court stated:

[T]o jump to the conclusion that somehow this gun had some connection with Coleonn, first of all, is an assumption, and then that Coleonn had something to do with the crime simply because his mother lived in the house behind which the victim was found is making a number of leaps that in any event *can only lead to speculation at the best*.

(Emphasis added.) We agree with the trial court. Jackson's offer of proof on the evidence offers at best a “possible ground of suspicion against another person.” *Id.* Accordingly, the trial court could properly exclude the evidence as irrelevant. *Jackson*, 188 Wis.2d at 195, 525 N.W.2d at 742.

Finally, Jackson argues that there was insufficient evidence to support his conviction for first-degree intentional homicide as a party to a crime. The record belies this argument.

When reviewing the sufficiency of the evidence to support Jackson's conviction, we will not reverse unless the evidence, when viewed most favorably to the verdict, is so lacking in probative value that no jury, acting reasonably, could have found guilt beyond a reasonable doubt. See *State v. Webster*, 196 Wis.2d 308, 320, 538 N.W.2d 810, 814 (Ct. App. 1995). Hence, we will only substitute our judgment for that of the jury if that jury relied on evidence that “conflicts with the law of nature or with fully established or conceded facts.” *Id.* at 320, 538 N.W.2d at 815 (citation omitted). Further, the jury is the “sole arbiter of the credibility of witnesses and alone is charged with the duty of weighing the evidence.” *Id.*

The State concedes that much of the testimony was conflicting, with witnesses recanting earlier statements to the police. Nonetheless, the State points out that there was clearly evidence on which the jury could base its decision to find Jackson guilty. We agree. We do not list all the evidence supporting the conviction, but point out some of the more significant items.

Both Robert J. and Terrell T. gave statements to police implicating Jackson. Robert J. testified that he shot Walker with a handgun handed to him by Jackson, and that he then handed the gun back to Jackson. This was corroborated by Charlotte Ward's son, who testified that watching from his house, he saw one assailant hand Robert J. a gun and saw Robert J. shoot Walker. Robert J. also testified that after he handed the gun back to Jackson, he fled, but heard two more gunshots from the alley. He testified that Jackson was the only person remaining in the alley with Walker.

Terrell T. gave statements to police, but recanted them on the stand. A detective testified that Terrell T. told him that Jackson, Robert J., and he agreed to rob Walker. Terrell T. told the detective that Jackson shot Walker, and that he (Terrell T.) fled from the alley. He heard two more shots from a different gun and assumed that it was Robert J. firing.

From this evidence, and from other corroborating testimony, the jury could clearly conclude that Jackson was guilty of first-degree intentional homicide, as party to a crime. *Id.*

In sum, we reject all three of Jackson's arguments and affirm.

*By the Court.* – Judgment and order affirmed.

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