COURT OF APPEALS
DECISION
DATED AND RELEASED

March 12, 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. 95-0819-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JACK KINNEY,

Defendant-Appellant.

APPEAL from judgments of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

Before Sullivan, Fine and Schudson, JJ.

PER CURIAM. Jack Kinney appeals from judgments of conviction, following a jury trial, for first-degree sexual assault (causing pregnancy) and second-degree sexual assault. He argues that the trial court improperly limited the defense in its voir dire. He also argues that trial court erroneously exercised its discretion in allowing one of the State's witnesses to testify. We reject both arguments and affirm.

Janna H. was sentenced to prison in 1978 for first-degree murder. In 1992, she was transferred from Taycheedah to the Milwaukee Women's Correctional Center and she began working at the Rodeway Inn. When she discovered that she was pregnant, she had an abortion, fearing that her pregnancy would jeopardize her chance for parole. She later denied the pregnancy but, after a physical examination confirmed the pregnancy and abortion, she accused Kinney, who also worked at the Rodeway Inn, of sexually assaulting her on July 4 and September 6, 1992. Following a jury trial, Kinney was convicted.

Kinney first argues that the trial court denied his right to a fair jury by limiting defense voir dire. Kinney primarily bases this claim on a comparison of the length of time allowed each side in voir dire. He also contends that the trial court limited defense voir dire by interrupting defense counsel three or four times.

The scope of voir dire, including the form and number of questions to be asked, rests within the discretion of the trial court. ***State v. Koch***, 144 Wis.2d 838, 847, 426 N.W.2d 586, 590 (1988). The trial court's broad discretion is subject to essential demands of fairness, however. ***Id.*** We will not interfere with a trial court's ruling on voir dire absent an erroneous exercise of that discretion. ***Id.***

We reject Kinney's arguments regarding voir dire. First, the trial court and the State asked many questions, obviating the need for more lengthy defense voir dire. Second, the trial court's interruptions of defense counsel were either cautions against being repetitive, *see* § 805.08, STATS. (voir dire "shall not be repetitious"), particularly due to the late hour into which voir dire was progressing, or mere interjections of "Anything further, counsel?" when defense counsel paused. Finally, Kinney does not point to any questions that defense counsel wished to ask that were not permitted to be asked.

Kinney also argues that the trial court erroneously exercised its discretion by allowing Rhonda Ambuehl to testify. The State sought to have Ambuehl testify as an expert on the behavior of women who have been incarcerated, long term, for violent offenses. The State used Ambuehl's testimony to rebut the defense theory of consent. The trial court concluded that

Ambuehl was qualified as an expert witness based on her years of experience as an inmate in a women's prison system and on parole, and based on her studies and research regarding the status of female inmates subsequent to their incarceration. The trial court ruled:

> This testimony is offered to assist the jury in understanding the ... reactions and conduct of inmates committed for violent crimes, their typical reactions or conduct which may not be consistent with the juror's common understanding based on their lack of knowledge. It is not offered to assess or comment on the credibility of [the victim] in this case, and such testimony would not be permitted, but to provide information to assist the jury on matters not in their common knowledge as to the reactions and affects on inmates convicted of violent crimes.... The challenge concerning the strength, the consistency of her opinions and the ... challenges concerning her depth of experience or the methodology for determining her opinions all go to her weight and credibility, not to the admissibility of that testimony ... [and] are all fair issues to be explored on cross-examination.

We have recently stated the applicable standard of review:

> "Expert testimony is admissible only if it is relevant." "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." A trial court's determination on the relevancy of the proffered evidence is a discretionary decision. In addition, relevant expert evidence must also "assist the trier of fact to understand the evidence or determine a fact in issue." A trial court's determination on whether the evidence will assist the trier of fact is also a discretionary determination.

State v. Morgan, 195 Wis.2d 388, 416-417, 536 N.W.2d 425, 435 (Ct. App. 1995) (citations omitted).

The State argues:

> Ambuehl did not testify that [the victim] displayed the extreme conflict-avoiding characteristics that she had described, nor did she express an opinion on any of the facts alleged in this case. She merely offered her own observations and experience of distinctive behavior typically exhibited by women inmates convicted of violent offenses. A trial court could reasonably conclude ... that Ambuehl's and [the victim]'s prison experiences were almost certainly outside the knowledge of the jury, and that Ambuehl's testimony could help the jury place [the victim]'s conduct and testimony in proper perspective.

Based upon our review of Ambuehl's testimony, we agree with the State's argument. Therefore, we find no erroneous exercise of discretion and we affirm the judgments.

By the Court. – Judgments affirmed.

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