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December 13, 2017

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You are hereby notified that the Court has entered the following opinion and order:

2016AP2495-CR

State of Wisconsin v. Keith L. White (L.C. # 2013CF4147)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Keith L. White appeals from a judgment convicting him of armed robbery and possession of a firearm by a felon. He contends that the circuit court erroneously exercised its discretion when it admitted certain evidence against him. Based upon our review of the briefs and record,

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm the judgment of the circuit court.

On August 6, 2013, a man with a Tec-9 gun robbed a security guard outside of a grocery store in Milwaukee. A second man with a revolver was also present during the robbery and ran off with the first man afterwards.

One week later, on August 13, 2013, police responded to a Shot Spotter alert,² which indicated that about thirty shots were fired near a home at 2128 West Clarke Street in Milwaukee. When police arrived at the scene, they observed numerous casings and bullet holes. Out of concern for the residents' safety, they searched the home where they found White and two guns—a Tec-9 and a revolver. White gave a false identity, and police took him into custody.

The security guard subsequently identified White as the man who robbed him at gunpoint. Police gathered additional evidence implicating White in the crime, including incriminating text messages from his cell phone and a photo of him with a Tec-9 gun. Accordingly, the State charged White, who was a convicted felon, with armed robbery and possession of a firearm by a felon.

Prior to trial, White filed a motion to exclude evidence concerning the August 13, 2013 shooting, claiming that it was irrelevant and unfairly prejudicial other acts evidence. The circuit court declined to make a ruling at that time.

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

² At trial, a police officer described Shot Spotter as “a system the City of Milwaukee uses to help triangulate gunshots. For example, if a gunshot goes off, the muzzle blasts are recorded by numerous microphones in the area.” The Shot Spotter “helps to triangulate the exact pinpoint area” of the gunshots.

At trial, the State called a police officer to testify about the August 13, 2013 shooting. The officer testified about the Shot Spotter alert, the numerous casings and bullet holes observed, the decision to search the home, the discovery of White and the guns inside, and White's giving of a false identity. During parts of the testimony, White again objected, which the circuit court overruled.

Ultimately, the jury found White guilty of the charged offenses. The circuit court imposed an aggregate sentence of fifteen years of initial confinement and ten years of extended supervision. This appeal follows.

On appeal, White contends that the circuit court erroneously exercised its discretion when it admitted evidence concerning the August 13, 2013 shooting. Again, he argues that such evidence was irrelevant and unfairly prejudicial other acts evidence.

The admissibility of other acts evidence is determined by using a three-step test: (1) whether the evidence is offered for a permissible purpose under WIS. STAT. § 904.04(2); (2) whether it is relevant under WIS. STAT. § 904.01; and (3) whether its probative value is substantially outweighed by the danger of unfair prejudice under WIS. STAT. § 904.03. *State v. Sullivan*, 216 Wis. 2d 768, 772-773, 576 N.W.2d 30 (1998).

A circuit court's decision to admit other acts evidence is committed to the circuit court's sound discretion. See *State v. Hammer*, 2000 WI 92, ¶21, 236 Wis. 2d 686, 613 N.W.2d 629. We generally look for reasons to sustain discretionary decisions and may, when necessary, search the record to determine if it supports the court's decision. See *State v. Lock*, 2012 WI App 99, ¶43, 344 Wis. 2d 166, 823 N.W.2d 378.

Here, we are persuaded that evidence concerning the August 13, 2013 shooting was properly admitted at trial. To begin, the evidence had a permissible purpose, which was to provide context for how White came to be a suspect in the case. *See State v. Shillcutt*, 116 Wis.2d 227, 236, 341 N.W.2d 716 (Ct. App. 1983) (context is an accepted basis for the admission of other acts evidence). Likewise, the evidence was relevant, as it explained how police were able to link White with guns similar to the ones used in the armed robbery. Finally, although the evidence was prejudicial to White's case, it was not unfairly so. The State was careful to avoid eliciting anything about the shooting that could have influenced the jury to decide the case on an improper basis, such as the fact that children were present at the time.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals