

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 2, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

**Nos. 01-0710-CR
01-0711-CR
01-0712-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL S. ALBERTS, JR.,

DEFENDANT-APPELLANT.

APPEALS from judgments and orders of the circuit court for Brown County: MARK A. WARPINSKI, Judge. *Affirmed.*

¶1 CANE, C.J.¹ The single issue in these three consolidated appeals is whether the trial court erred by admitting expert testimony regarding the

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

characteristics of domestic abuse, the cycle of violence found in domestic abuse cases, the attributes of an abuser, the coping mechanisms of victims and, finally, whether the victim's behavior was consistent with that of a domestic abuse victim. Michael Alberts, Jr., contends that the trial court erred by admitting this testimony and denying his motion for a new trial. This court is satisfied that the trial court properly exercised its discretion when it admitted the expert's testimony. Therefore, the judgments convicting Alberts, after a jury trial, of a series of misdemeanor offenses involving domestic abuse, battery, disorderly conduct, intimidating a witness, bail jumping and unlawful use of a phone and the orders denying postconviction relief are affirmed.

¶2 Essentially, Alberts contends that the expert's testimony was to the effect that the complainant was telling the truth, which is testimony specifically prohibited under the holding in *State v. Haseltine*, 120 Wis.2d 92, 96, 352 N.W.2d 673 (Ct. App. 1984). Under Wisconsin law, no witness, whether expert or lay, may testify "that another mentally and physically competent witness is telling the truth." *Id.* Alberts reasons that because the expert's opinion was derived, in part, from reading the criminal complaint, the jury must have interpreted the expert's testimony as an opinion that the incidents alleged in the complaint had actually occurred.

¶3 The admission of evidence is generally within the discretion of the trial court. See *State v. Pharr*, 115 Wis. 2d 334, 342, 340 N.W.2d 498 (1983). To sustain a discretionary ruling on appellate review, this court need only determine that the trial court examined the relevant facts, applied a proper standard of law, and, using a rational process, reached a reasonable conclusion. *Franz v. Brennan*, 150 Wis. 2d 1, 6, 440 N.W.2d 562 (1989). If the court relied on an erroneous understanding of an evidentiary rule, then it failed to properly exercise its

discretion because it made an error of law. *State v. Hutnik*, 39 Wis. 2d 754, 763-64, 159 N.W.2d 733 (1968).

¶4 The correct parameters of expert opinion testimony in this area were laid out in *State v. Jensen*, 147 Wis. 2d 240, 257, 432 N.W.2d 913 (1988). The expert may describe the behavior of victims of the same type of crime. *Id.* The expert may also be asked to describe the complainant’s behavior. *Id.* Finally, the expert may be asked if the complainant's behavior is consistent with other victims. *Id.*

¶5 This court holds that the use of the expert in this case did not run afoul of *Haseltine* and, indeed, was within the parameters of *Jensen*. Wisconsin's expert testimony law is set forth in WIS. STAT. § 907.02:

Testimony by experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

¶6 While Wisconsin law exhibits fear of encroachment upon the function of the trier of fact, it does allow the rational approach of “assisting” the trier of fact to “understand the evidence” or to “determine a fact in issue.” *Id.* Whether the situation is a proper one for the use of expert testimony is to be determined on the basis of assisting the trier of fact. *Id.*

¶7 Here, the State offered the expert’s testimony to assist the jury in understanding why the complainant may have previously recanted her claims of abuse and why she may have returned to the relationship. The expert’s opinion was limited to the consistency of behavior between profile persons of domestic abuse and the behavior in this case. Contrary to Alberts’ suggestion, the expert’s

testimony did not suggest that the complainant was truthful. Instead, his testimony simply stated that the complainant's behaviors reported in the criminal complaint were consistent with domestic abuse victims. As the State correctly argues, it was still required to prove beyond a reasonable doubt through other witnesses that the allegations in the complaint had in fact occurred.

¶8 Thus, because the trial court reasonably exercised its discretion within the accepted legal standards set forth in *Jensen*, it did not err by admitting the expert's testimony and properly denied Alberts' motion for a new trial. The judgments of conviction and orders denying postconviction relief are therefore affirmed.

By the Court.—Judgments and orders affirmed.

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

