

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 25, 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(1), STATS.

NOTICE

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

**Nos. 94-2757-CR
94-3133-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVID W. HENDRICKS,

Defendant-Appellant.

APPEALS from a judgment and an order of the circuit court for Monroe County: MICHAEL J. McALPINE, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Vergeront, J.

PER CURIAM. A jury found David W. Hendricks guilty of four counts of first-degree sexual assault of a child and three counts of second-degree sexual assault of a child. The charges arise from sexual contact between Hendricks and the two daughters of Cindy E., his live-in girlfriend at the time of the assaults.

Hendricks's theory of defense was that the girls fabricated their stories because they were unhappy with his presence in the house. Hendricks's theory also suggested that Cindy was encouraging her daughters to lie because she wanted Hendricks out of the house.

On appeal, Hendricks contends that the trial court erroneously limited his cross-examination in two regards. First, Hendricks wanted to ask Cindy what she had done with a car, a dog, and a dirt bike. According to an offer of proof at trial and testimony at the postconviction hearing, Hendricks wanted to show that Cindy had misappropriated each item of property after he was jailed, and that Cindy was motivated to lie to keep Hendricks in jail. Hendricks also attempted to question Cindy about her relationship with Mark Zebell. According to Hendricks, Zebell was Cindy's new boyfriend, and she wanted to keep Hendricks in jail so that she could continue her relationship with Zebell. The trial court ruled that both lines of inquiry were not relevant. Because the trial court properly exercised its discretion, we affirm.

Unless otherwise prohibited, relevant evidence is admissible. Section 904.02, STATS. Evidence is relevant if it has "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." Section 904.01, STATS.

In the arena of cross-examination, the proper test "is not whether the answer sought will elucidate any of the main issues in the case but whether it will be useful to the trier of fact in appraising the credibility of the witness and evaluating the probative value of the direct testimony." *State v. Lindh*, 161 Wis.2d 324, 348, 468 N.W.2d 168, 176 (1991) (quoting *Rogers v. State*, 93 Wis.2d 682, 689, 287 N.W.2d 774, 777 (1980)). Cross-examination will not be allowed unless there is a reasonable relation between the evidence sought to be introduced and the proposition to be proved. *Id.*

The scope of proper cross-examination is a question committed to the broad discretion of the trial court. *Id.* This court will reverse a trial court's limitation or prohibition of cross-examination offered to show bias only if the ruling "represents a prejudicial abuse of discretion." *Id.* at 348-49, 468 N.W.2d at

176. This court will affirm if a reasonable basis exists for the trial court's ruling. *Id.* at 349, 468 N.W.2d at 176.

Hendricks contends that Cindy's misappropriation of his property "goes directly to [her] motive to lie and to urge her daughters to do the same. [It] shows a financial motive ... to keep [him] incarcerated." Hendricks relies on *State v. Johnson*, 184 Wis.2d 324, 338-39, 516 N.W.2d 463, 467 (Ct. App. 1994), in which this court ruled that a victim's attempt to gain possession of a defendant's property following her accusation and the defendant's incarceration was highly probative to a theory of defense that the victim was falsely accusing the defendant for financial gain.

Given these facts, *Johnson* is not controlling. Unlike *Johnson*, Cindy was not the victim of these crimes. Her daughters were accusing Hendricks, and accusations against Hendricks were first made several months before his incarceration and Cindy's actions. Thus, the nexus between the accusations and Cindy's conduct was largely speculative. See *Lindh*, 161 Wis.2d at 350-51, 468 N.W.2d at 176-77.

Additionally, the record shows that Cindy did not believe her older daughter when she told her mother of Hendricks's conduct. Rather than urging her daughter to pursue the matter, Cindy did nothing, and encouraged her daughter to do the same. There is no evidence that Cindy urged either of her children to accuse Hendricks of sexual assault. Therefore, the trial court did not misuse its discretion when it limited Hendricks's cross-examination on this point.

Hendricks also contends that evidence of Cindy's relationship with Mark Zebell was relevant because it suggested a reason for Cindy to lie in order to keep Hendricks incarcerated. The trial court's limitation in this area was a proper discretionary ruling. First, we note that evidence that Zebell was Cindy's current boyfriend was before the jury. More importantly, it is undisputed that Hendricks had moved out of the house before Cindy's daughters talked with a police officer about the assaults. And, as noted above, the older daughter told Cindy and a school friend about the assaults many months before Zebell and Cindy became involved with each other. The nexus between their relationship and the accusations is simply lacking.

By the Court. – Judgment and order affirmed.

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