COURT OF APPEALS
DECISION
DATED AND RELEASED

December 19, 1995

No. 94-2986-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MUSTAFA ABD'ALLAH,
formerly known as ANTHONY JONES,

Defendant-Appellant.

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

Before Sullivan, Fine and Schudson, JJ.

PER CURIAM. Mustafa Abd'Allah (formerly known as Anthony Jones) appeals from a judgment of conviction for robbery, following a jury trial, and for felon in possession of a firearm, following his ***Alford*** plea. Abd'Allah also appeals from an order denying his postconviction motion for a new trial. He claims that the trial court erred when it allowed the State to introduce into evidence Abd'Allah's sexual threats against the victim allegedly made "after the

conclusion of the robbery." He also claims that the trial court erroneously exercised its sentencing discretion and that his sentence was unduly harsh. We reject his arguments and affirm.

D'Andrea Stallings, testified that Abd'Allah and his friend, Larry DeArmond, demanded money from her after the two men gave her a ride from a bus stop. Stallings testified that on October 2, 1992, she asked Abd'Allah and his friend to drive her to pick up a $200 money order from an apartment manager. The apartment manager accompanied the three individuals to a check cashing agency where Stallings received the $200 in cash. After Abd'Allah, DeArmond and Stallings made numerous other stops, Abd'Allah stopped the car, forcibly buckled Stallings's seatbelt and locked her door. After confronting Stallings about the source of her cash, jewelry and clothes, Abd'Allah punched her in the face. Abd'Allah continued to punch the victim until she gave him the money she kept in her shoes, her watch and her diamond ring. Stallings testified that when she told Abd'Allah that she had nothing of value left, Abd'Allah "threatened to rape me and throw my body in the gutter, leave me for dead" if she was lying to him. Stallings then produced another $10.

Stallings testified that after Abd'Allah again punched her, Abd'Allah "told me he was going to make me have sex with him and Larry and then he was going to sit and watch me give Larry oral sex because I hurt Larry's feelings." Abd'Allah then demanded that Stallings tell him where she got her money and that she would have to give him her money in the future. As the car approached a restaurant, Stallings screamed and hit Abd'Allah in the face with her elbow, forcing Abd'Allah to stop the car. When Stallings unfastened her seatbelt and unlocked the door in an effort to get away, Abd'Allah grabbed her blouse, ripped it and her bra open, and demanded to see if she was hiding any more money. Stallings, however, then escaped.

At trial, Abd'Allah and DeArmond denied giving Stallings a ride and denied participating in the robbery.

Abd'Allah argues that the trial court improperly admitted Stallings's testimony about his sexual threats. Abd'Allah claims that the sexual

threats "occurred after the robbery had concluded," were entirely separate from the robbery and, therefore, were irrelevant.[1]

In motions in limine, the trial court concluded that the sexual threats were relevant to the entire course of conduct:

> Well, I think that's relevant to the whole course of conduct that is at issue here, and I don't find that it is unduly prejudicial given its probative value as to the various threats that were being made against the victim in connection with this incident.

In its decision on Abd'Allah's postconviction motion, the trial court further explained:

> The threats were part and parcel of the defendant's violent and threatening course of conduct by which he forced the victim to give up her property in this robbery, which took place during a car ride which began innocuously but ended violently. It was directly relevant to the elements of the offense of robbery and was an integral part of the central facts of the case. Any prejudice to the defendant in admitting this evidence did not outweigh the probative value of the evidence, given its direct relevance.

Whether to admit or exclude evidence rests within the discretion of the trial court, and this court will not interfere with the trial court's ruling absent an erroneous exercise of discretion by the trial court. *See* ***State v. Clark***,

[1] Although Abd'Allah notes that he made "passing reference to the fact that this evidence may represent improper 'other bad acts' evidence" under RULE 904.04(2), STATS., he stated that "the main thrust of his argument is that the evidence was irrelevant to the crime charged." Therefore, we address his challenge to the admissibility of the sexual threats under relevancy analysis.

179 Wis.2d 484, 490, 507 N.W.2d 172, 174 (Ct. App. 1993). In discussing the principles of relevancy encompassed in RULES 904.01-904.03, STATS., the Wisconsin Supreme Court has stated:

> The Wisconsin statutory definition of relevancy requires that the evidence introduced has a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable. The evidence need not ... bear directly upon one of the elements of the crime. It may ... bear on motive; or it may establish the presence of the defendant at the scene of the crime; or it may show that the defendant did the act involved; or it may bear upon any one of countless other facts which are of consequence to the determination of the action.

Holmes v. State, 76 Wis.2d 259, 268, 251 N.W.2d 56, 61 (1977). The supreme court noted that one of the "countless other factors" was when the evidence helped "to complete the story of the crime." ***Id.*** at 269, 251 N.W.2d at 61.

The record contains ample evidence to support the trial court's conclusion that the sexual threats were part of the continuing course of conduct that comprised the robbery. Abd'Allah's threat of rape was designed to intimidate Stallings into surrendering any additional valuables she may have had. The threat was successful, as Stalling gave Abd'Allah an additional $10. Moreover, Abd'Allah's threat of forcing the victim to perform sexual acts was immediately followed by further demands of cash. Additionally, Abd'Allah then ripped Stallings's bra open to discover if she was hiding more money. These factors assisted the jury in helping to complete the story of the crime. *See* ***id.*** Finally, the trial court did not erroneously exercise its discretion by refusing to exclude the evidence under RULE 904.03, STATS.

Abd'Allah also argues that the trial court's sentence was not supported by sufficient reasoning and was unduly harsh. Our standard when reviewing a criminal sentence is whether or not the trial court erroneously exercised discretion. ***State v. Wagner***, 191 Wis.2d 322, 332, 528 N.W.2d 85, 89

(Ct. App. 1995). There is a strong policy against an appellate court interfering with a trial court's sentencing determination and, indeed, an appellate court must presume that the trial court acted reasonably. ***State v. Thompson***, 146 Wis.2d 554, 564, 431 N.W.2d 716, 720 (Ct. App. 1988).

The sentencing court must consider three primary factors: (1) the gravity of the offense; (2) the character of the offender; and, (3) the need to protect the public. ***Wagner***, 191 Wis.2d at 333, 528 N.W.2d at 89. The trial court may also consider: the defendant's past record of criminal offenses; the defendant's history of undesirable behavior patterns; the defendant's personality, character and social traits; the presentence investigation results; the aggravated or vicious nature of the defendant's crime; the degree of the defendant's culpability; the defendant's demeanor at trial; the defendant's age, educational background, and employment record; the defendant's remorse, repentance or cooperativeness; the defendant's rehabilitative needs; the rehabilitative needs of the victim; the needs and rights of the public; and, the length of the defendant's pretrial detention. *See* ***State v. Jones***, 151 Wis.2d 488, 495-496, 444 N.W.2d 760, 763-764 (Ct. App. 1989). The weight to be given to each of the factors is within the trial court's discretion. ***Wagner***, 191 Wis.2d at 333, 528 N.W.2d at 89.

In sentencing Abd'Allah, the trial court first noted the seriousness of his robbery, calling it "assaultive," "very calculated," and "a violation of [Stallings's] personal integrity as well as her property." The court next considered Abd'Allah's background, noting a lengthy record of assaultive offenses and property crimes. Finally, the court found that the public interest required a substantial prison sentence, telling Abd'Allah that he was "unwilling or unable to conform your conduct to the requirements of the law and the community needs to be protected from you." Review of the record reveals that the trial court considered the appropriate sentencing factors and adequately explained the basis for the sentence it imposed.

Abd'Allah further claims that the trial court's sentence was unduly harsh. When a defendant argues that his or her sentence is unduly harsh or excessive, we will find an erroneous exercise of discretion "only where the sentence is so excessive and unusual and so disproportionate to the offense committed so as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the

circumstances." ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975).

The court sentenced Abd'Allah to eight years for the robbery, two years short of the maximum, and two concurrent years time for the felon-in-possession-of-a-firearm offense. Thus, Abd'Allah was sentenced to only eight years when the trial court could have imposed a sentence of twelve years. Under these circumstances, the sentence was not unduly harsh or excessive. *See* ***Ocanas***, 70 Wis.2d at 185, 233 N.W.2d at 461; ***State v. Daniels***, 117 Wis.2d 9, 22, 343 N.W.2d 411, 417-418 (Ct. App. 1983) ("A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.").

By the Court. – Judgment and order affirmed.

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