

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 31, 1995

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. 95-1440-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SHARON McBRIDE,

Defendant-Appellant,

DEMEATRICE M. TROTTER,

Defendant.

APPEAL from a judgment of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed.*

WEDEMEYER, P.J.¹ Sharon McBride appeals from a judgment entered after a jury found her guilty of battery, as party to the crime, contrary to §§ 940.19(1) and 939.05, STATS. She claims the trial court erroneously exercised

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

its discretion in granting the State's motion in limine to exclude evidence of an altercation that occurred between McBride's victim and McBride's nephew. Because the trial court did not erroneously exercise its discretion in excluding this evidence, this court affirms.

I. BACKGROUND

Sharon Austin, the victim in this case, resides in McBride's sister's home with McBride's sister's five children. Austin acts as a foster parent to these children because their mother is incarcerated. On May 15, 1994, McBride received a phone call from her father indicating that Austin had kicked her twelve-year-old nephew out of the house.

In response, McBride and her boyfriend, Demeatrice Trotter, drove to Austin's residence and a physical fight ensued. After McBride and Trotter left, Austin drove herself to the police station to report the incident. Austin had scratches, a swollen lip and injury to her thumb. McBride and Trotter were charged with battery, party to the crime.

Prior to trial, the State moved to exclude evidence of Austin kicking the nephew out of the house. The trial court granted the motion on the basis that the incident was irrelevant. The case was tried to a jury, which convicted McBride. McBride now appeals.

II. DISCUSSION

McBride claims that the trial court should not have excluded the evidence of Austin kicking her nephew out of the house because it was relevant and it was part of her defense. This court is not persuaded.

An appellate court reviews a trial court's evidentiary rulings according to the erroneous exercise of discretion standard. See *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983); *State v. Alsteen*, 108 Wis.2d 723, 727, 324 N.W.2d 426, 428 (1982). If a trial court applies the proper law to

the established facts, this court will not find an erroneous exercise of discretion if there is any reasonable basis for the trial court's ruling. *Id.*

The trial court excluded this evidence because it found that:

[U]nder 904.04, evidence of other acts, or in this case wrongs of the alleged victim, Sharon Austin, are not relevant. They're not relevant to an element of this offense, battery. Although this offense does have an element, intent, the intent that the State is required to prove is intent on the part of McBride and Trotter to cause bodily harm.... And it's certainly not relevant to that. If the defense in this case is self-defense, evidence of the reason they were all arguing is not relevant to that under the circumstances as the two lawyers have just offered the Court, that they're not making the claim Miss McBride or Mr. Trotter acted in defense of themselves or an innocent third party. It's irrelevant. And for those reasons it cannot be elicited from any witnesses at this trial.

... And I could find no case that permitted the evidence requested here and for that reason find it is irrelevant under 904.03. If it were relevant, I think it would be highly prejudicial and likely to sidetrack a jury.

The trial court's reasoning demonstrates that it applied relevant law to the facts in this case and reached a rational conclusion. 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." *See* § 904.01, STATS. The altercation between Austin and the nephew does not satisfy this legal requirement. Accordingly, this court concludes that the trial court did not erroneously exercise its discretion in excluding this evidence.

Further, this court rejects McBride's claim that excluding this

evidence prevented her from presenting a defense. A defendant's right to present a defense does not allow the introduction of irrelevant evidence. *State v. Pittman*, 174 Wis.2d 255, 275, 496 N.W.2d 74, 82-83, *cert. denied*, 114 S.Ct. 137 (1993).

By the Court. – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.