

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JANUARY 22, 1997**

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. 96-1660-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**WILLIAM A. GASPER,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Eau Claire County: PAUL J. LENZ, Judge. *Affirmed.*

Before Cane, P.J., Myse and Carlson, JJ.

PER CURIAM. William Gasper appeals a judgment convicting him of sexually assaulting a child. He argues that the complaint and information were not sufficiently specific as to the date of the offense to allow him an adequate opportunity to defend himself and that the trial court erroneously allowed other crimes evidence. We reject these arguments and affirm the judgment.

Gaspar was charged with having sexual contact with an eight-year-old child. Although the complaint and the testimony at the preliminary hearing created a wide range of potential dates for this offense, the information filed eight months before trial alleged that the crime took place between August 4 and October 1, 1994. Because the date of the commission of the crime is not a material element, it need not be precisely alleged and the only questions are whether the two-month timeframe prevented Gaspar from preparing a defense and whether he might be subjected to double jeopardy because of lack of specificity in the date. *State v. Fawcett*, 145 Wis.2d 244, 250, 426 N.W.2d 91, 94 (Ct. App. 1988); *Holesome v. State*, 40 Wis.2d 95, 102, 161 N.W.2d 283, 287 (1968).

Although Gaspar complains that he was not given sufficient notice to prepare a defense, he has not identified any defense that would have been available had the timeframe been further narrowed. Gaspar had been given a key to the victim's house and had ready access to the victim on numerous occasions. Nothing in the record suggests that Gaspar would have had an alibi if a more specific timeframe had been alleged.

There is no realistic double jeopardy issue. The State concedes that it cannot charge Gaspar with another sexual assault of the same victim during the timeframe alleged in the information. Therefore, the information was sufficiently specific to satisfy Gaspar's due process rights.

The trial court properly exercised its discretion when it allowed evidence that Gaspar had previously sexually assaulted his granddaughters. The decision to admit evidence lies within the trial court's discretion. *State v. Davis*, 171 Wis.2d 711, 722, 492 N.W.2d 174, 178 (Ct. App. 1992). This court will not reverse a discretionary decision unless the use of the court's discretion is wholly unreasonable. *State v. Johnson*, 118 Wis.2d 472, 481, 348 N.W.2d 196, 201 (Ct. App. 1984).

Other crimes evidence is admissible if it is relevant to some issue other than propensity unless its probative value is substantially outweighed by undue prejudice. See *State v. Speer*, 176 Wis.2d 1101, 1113-14, 501 N.W.2d 429, 432 (1993). While the State has the burden of showing that this evidence is relevant to one or more of the named admissible purposes, greater latitude of

proof is offered in sex crimes cases involving a minor child. *State v. Mink*, 146 Wis.2d 1, 13-14, 429 N.W.2d 99, 104 (Ct. App. 1988). Here, evidence that Gasper sexually assaulted his grandchildren is relevant to prove that his motive for touching the victim was sexual gratification. See *State v. Plymesser*, 172 Wis.2d 583, 592-95, 493 N.W.2d 367, 371-72 (1992). When intent is an element of the offense charged, evidence of other crimes is relevant even if the defendant does not directly dispute the State's proof of intent. *Id.*

The other crimes were near in time and circumstances to the offense alleged here and, therefore, have substantial probative value. The sexual contact with Gasper's granddaughters involved victims of similar ages to the victim in this case and, although the victim here was not related to Gasper, he had a close relationship with the victim's mother and the victim called him "daddy." The previous offenses were four years and eight years before this sexual assault, and Gasper spent much of the intervening time in prison. Periods of confinement are not considered in computing the time between incidents. *State v. Rutchik*, 116 Wis.2d 61, 75, 341 N.W.2d 639, 645 (1984). Any potential unfair prejudice was presumptively eliminated by a curative instruction that was given immediately prior to the other crimes testimony and again at the close of the trial. See *State v. Williamson*, 84 Wis.2d 370, 391, 267 N.W.2d 337, 347 (1978). Therefore, the trial court properly exercised its discretion when it admitted the other crimes evidence.

*By the Court.*—Judgment affirmed.

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