COURT OF APPEALS
DECISION
DATED AND FILED

August 27, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0367-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ISIAH F. GLASS, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County: ROBERT J. MIECH, Reserve Judge. *Affirmed.*

BROWN, J. Isiah F. Glass, Jr. appeals from the trial court's decision to admit evidence that he was released from prison on the same day he violated a domestic abuse injunction. According to Glass, the evidence of his release from prison should not have been admitted because it so prejudiced the jury against him that he did not receive a fair trial. We affirm the trial court's determination that the evidence was admissible.

We recite the facts in the light most favorable to the verdict. *See* ***Nelson v. McLaughlin***, 205 Wis.2d 460, 464, 556 N.W.2d 130, 131 (Ct. App. 1996), *aff'd*, No. 95-3391, slip op. (Wis. July 2, 1997). On July 27, 1995, Rebecca Pursell obtained a domestic abuse injunction against Glass. The injunction required, among other things, that Glass refrain from contacting Pursell and that he avoid her residence.

On April 30, 1997, Glass was released from prison. That afternoon, Glass and his sister were riding in her car and drove to Pursell's apartment complex. There, Glass saw two of his nephews moving into a building across the street from Pursell's apartment complex. They stopped the car and Glass got out of the car to speak with his nephews.

At this time, Pursell and her two children exited their apartment building. Pursell heard someone call her name and looked to see Glass standing in the street. Pursell began to walk away when she heard Glass indicate that he just wanted to see his daughter. She continued to walk when she heard Glass say, "The time has come." Pursell looked back to see Glass being physically restrained by another person. Shaken by this encounter, Pursell and her children immediately got into her car and left. Glass was subsequently charged with violating the domestic abuse injunction.

At his trial, Glass sought to keep the State from introducing evidence that he was released from prison the day he had contact with Pursell, arguing that it was irrelevant. The trial court denied his request and the evidence was admitted. The jury convicted Glass of violating the domestic abuse injunction. Glass appeals the trial court's decision to admit the evidence.

A trial court's decision to admit or exclude evidence is discretionary. As an appellate court, we will not disturb this exercise of discretion provided there is a reasonable basis for the trial court's determination. *See* ***State v. Pharr***, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983).

First, Glass argues that evidence of his release from prison on the day he had contact with Pursell is irrelevant for proving the elements of the crime. Relevant evidence is that which has a 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. Evidence can be found relevant when it "'is only a link in the chain of facts ....'" ***Pharr,*** 115 Wis.2d at 346, 340 N.W.2d at 503 (quoted source omitted).

The evidence of Glass' prison release provided an otherwise missing link in the chain of events surrounding the violation. Prior to being released from prison, Glass had no opportunity to violate the injunction. The fact that he did so at the first available opportunity is relevant in showing that he had no regard for the injunction and thus intentionally and knowingly violated it. Therefore, we hold that the trial court did not misuse its discretion when it found that evidence of Glass' release from prison was relevant to proving the elements of the crime.

Next, Glass argues that the evidence of his release from prison is inadmissible because it is a prior bad act and does not fall under any exception to the ban on evidence of prior wrongs. Before admitting evidence of other crimes, the trial court must apply a two-part test. *See* ***State v. Shillcutt***, 116 Wis.2d 227, 235, 341 N.W.2d 716, 719 (Ct. App. 1983), *aff'd*, 119 Wis.2d 788, 350 N.W.2d 686 (1984). First, the trial court must determine whether the offered evidence fits

an exception under § 904.04(2), STATS.[1] *See* ***Shillcutt.*** Second, the court must exercise its discretion under § 904.03, STATS.,[2] and determine whether the probative value of the evidence is substantially outweighed by its prejudicial effect. *See* ***Shillcutt.*** Furthermore, this court has upheld the use of other crimes evidence when it "'furnishes part of the context of the crime or is necessary to a full presentation of the case.'" ***Shillcutt***, 116 Wis.2d at 236, 341 N.W.2d at 720 (quoted source omitted).

In examining the first part of the ***Shillcutt*** test, we hold that the trial court did not misuse its discretion in determining that the evidence fell within an exception to the ban on other crimes evidence. The trial court determined that the evidence showed knowledge and state of mind that Glass was committing a crime. We agree. Despite knowing that the restraining order existed, the evidence creates an allowable inference that he had the state of mind to go to Pursell's residence as soon as he was released from prison. Moreover, the evidence could also have been admitted under several other § 904.04(2), STATS., exceptions, such as

---

[1] Section 904.04(2), STATS., reads:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

[2] Section 904.03, STATS., reads:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

opportunity, intent and absence of mistake or accident. Finally, it was necessary to a full presentation of the case. Accordingly, the first part of the ***Shillcutt*** test is met.

Next, we consider the second part of the ***Shillcutt*** test. Glass argues that the evidence concerning his prison term is more prejudicial than probative. We disagree. The evidence served the probative value of providing the jury with a full presentation of the case; and it allowed the jury to consider proof of knowledge, state of mind, opportunity, intent, and absence of mistake or accident. Comparatively, the prejudicial nature does not substantially outweigh its probative value. *See* § 904.03, STATS. The jury only heard that Glass had been released from prison earlier that day. There was no evidence admitted on why or how long Glass was in prison or of the underlying facts of the crime for which he was incarcerated. Therefore, we hold that the trial court's determination that the evidence was more probative than prejudicial was not a misuse of discretion.

By the Court.—Judgment affirmed.

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