

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

December 23, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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

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.

**No. 99-0273-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**SAMUEL E. BALL,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Juneau County:  
PATRICK J. TAGGART, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Roggensack, JJ.

¶1 PER CURIAM. City of New Lisbon Police Chief Samuel Ball appeals his convictions for one count of misconduct in office and two counts of extortion. Ball's convictions occurred because he promised not to prosecute persons who wrote checks without sufficient funds (NSF checks) in their accounts

if they met the following conditions: (1) made good on the checks; and (2) gave money to Ball's DARE (Drug Abuse and Resistance Education) fund. On appeal, Ball makes three arguments: (1) the trial court's denial of a mistrial for witness tampering and intimidation was an abuse of discretion; (2) the trial court abused its discretion in not taking judicial notice of a Wisconsin Attorney General opinion authorizing police to threaten prosecution unless NSF check writers covered the checks; and (3) the evidence was insufficient to prove extortion. We reject Ball's arguments and affirm his convictions.

**Mistrial.**

¶2 Whether to grant a mistrial is a discretionary determination by a trial court. *See State v. Pankow*, 144 Wis.2d 23, 47, 422 N.W.2d 913, 921 (Ct. App. 1988). A trial court should grant a mistrial only if the claimed error has such a high degree of prejudice, viewed in light of the entire proceeding, that justice requires a new trial. *See State v. Grady*, 93 Wis.2d 1, 13, 286 N.W.2d 607, 612 (Ct. App. 1979).

¶3 Ball made the trial court aware of the claimed witness tampering and intimidation by the sheriff's department, and the trial court allowed Ball to ask the witnesses questions in that regard. We have no reason to believe that the jury failed to weigh the merit of Ball's claims when it reached its verdict. Moreover, none of the witnesses who were allegedly intimidated testified that they were asked to give untruthful testimony or to alter their testimony. We therefore perceive no likelihood that a new trial would have a different outcome. In short, the record shows no erroneous exercise of discretion by the trial court.

### **Attorney General Opinion.**

¶4 Ball wanted the trial court to take judicial notice and the jury to weigh 63 OP. ATT’Y GEN. 341 (1974) in reaching its verdict. Judicial notice is a doctrine that may be applied to grant recognition to certain facts that are “matters of indisputable common knowledge.” See *Perkins v. State*, 61 Wis.2d 341, 346, 212 N.W.2d 141, 143 (1973). The attorney general’s opinion dealt with how the executive branch interpreted the Wisconsin Consumer Act. It was similar to an expert opinion on the law. Wisconsin courts have long excluded expert opinions on legal questions from trials as incompetent and therefore, inadmissible evidence. See *State ex rel. A. Hynek & Sons Co. v. Board of Appeals*, 267 Wis. 309, 315c-15d, 66 N.W.2d 623, 625 (1954); *State ex rel. Morehouse v. Hunt*, 235 Wis. 358, 366-67, 291 N.W. 745, 749 (1940). The trial court made a discretionary decision based on sound legal principles; therefore, we see no erroneous exercise of discretion. See *State v. Alsteen*, 108 Wis.2d 723, 727, 324 N.W.2d 426, 428 (1982).

### **Sufficiency of the Evidence.**

¶5 Section 943.30(1), STATS.,<sup>1</sup> requires the State to prove a “malicious” threat and Ball claims the proof was insufficient to do so. Ball claims that he simply threatened to accuse the NSF check writers of something they admitted doing—passing bad checks—and therefore, his threats were not malicious. Ball

---

<sup>1</sup> Section 943.30(1), STATS., states in relevant part:

Whoever, either verbally or by any written or printed communication, maliciously threatens to accuse or accuses another of any crime or offense ... with intent thereby to extort money ... is guilty of a Class D felony.

misinterprets § 943.30(1), STATS. It does not require “ill will” toward the person who is the object of the extortion; it requires that the person accused made the threat while knowing he was not entitled to the property he was demanding. *See State v. Voss*, 205 Wis.2d 586, 593, 556 N.W.2d 433, 435 (Ct. App. 1996). Here, Ball demanded contributions to a project in which he was interested, when no donations were due. No ill will toward the NSF check writers was needed; the evidence was sufficient to convict Ball.

*By the Court.*—Judgment affirmed.<sup>2</sup>

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

---

<sup>2</sup> This opinion is based upon all briefs filed.

