

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 31, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2517-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON R. ROWIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
SARAH B. O'BRIEN, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Jason Rowin appeals a judgment convicting him of being party to the crimes of first-degree intentional homicide by use of a dangerous weapon, first-degree reckless injury by use of a dangerous weapon, two counts of first-degree reckless endangerment by use of a dangerous weapon, and

conspiracy to commit armed robbery. He claims the trial court erroneously exercised its discretion by admitting evidence that he had brought three firearms unrelated to the offenses to the home of a co-defendant on the day of the offenses. For the reasons discussed below, we conclude there was no misuse of discretion and affirm.

BACKGROUND

¶2 Rowin and Spencer Christianson approached the residence of Nick Stone on the evening of October 28, 1997. Rowin identified himself to a couple sitting on the porch and asked for Stone. Stone came outside, pushed Rowin back off the porch and ordered him off his property. According to the surviving victim, Rowin yelled, “Shoot him. Shoot him.” Christianson then pulled a .22 rifle from underneath his trench coat and fired between eight and twelve rounds, killing Stone, and injuring one of the people on the porch.

¶3 Several witnesses testified that Stone and Rowin had exchanged threats earlier in the week. Stone said he would beat Rowin up, and Rowin said he would kill Stone. The hostility arose from Stone’s accusation that Rowin had called the police, causing a group of people at a motel party to be arrested.

¶4 Rowin testified that his purpose in visiting Stone was to see if the two could work things out, and that Christianson said that he had seen Stone reach behind his back as if going for a weapon before Christianson began shooting. However, Christianson, Jason Frazier, and April Wunderlin all testified, with some variations, that they and Rowin were drinking together at Christianson’s house on the evening of the shooting. At some point, they discussed getting some marijuana, and decided, at Rowin’s suggestion, to rob Stone. Christianson was to bring a gun, and to shoot Stone if he resisted.

¶5 Pursuant to a pre-trial ruling, the State also presented evidence that: (1) the day before the shooting Rowin asked his girlfriend, Michelle Galston, whether she wanted to see the gun he was going to use to kill Stone, and told her it was nearby; (2) the day of the shooting, Wunderlin drove Rowin and Frazier to a location near Galston's apartment where they retrieved three guns from under some bushes; (3) Wunderlin, Rowin and Frazier brought the guns to Christianson's trailer and put them in Christianson's bedroom; and (4) after agreeing upon the plan to rob Stone, Christianson and Rowin went into Christianson's bedroom to choose an appropriate weapon. In response, Rowin testified that he had stolen the weapons from a storage locker in Galston's apartment solely for the purpose of selling them to Christianson, which he subsequently did.

STANDARD OF REVIEW

¶6 We review the trial court's admission of other acts evidence under the erroneous exercise of discretion standard. *See State v. Sullivan*, 216 Wis. 2d 768, 780-81, 576 N.W.2d 30 (1998). That means we will sustain the evidentiary ruling so long as the trial considered the facts of record under the proper legal standard and reasoned its way to a rational conclusion. *See Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991).

ANALYSIS

¶7 Under WIS. STAT. § 904.04(2) (1997-98),¹ evidence of other crimes or acts may be admissible when offered for the purpose of establishing a plan or

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

motive that reduces the possibility that the charged conduct was innocent. The evidence still must be relevant under WIS. STAT. §§ 904.01 and 904.02, in that it relates to a fact or proposition of consequence to the determination of the action, and its probative value must substantially outweigh the danger of unfair prejudice or confusion of issues under WIS. STAT. § 904.03. See *Sullivan*, 216 Wis. 2d at 785-89. Other acts evidence is not admissible merely to show that the defendant is a bad person likely to commit criminal offenses. See *id.* at 782.

¶8 Rowin claims the weapons he retrieved from the bushes, if not completely irrelevant to the crimes charged, were at least of low probative value, because they were not used in the shooting and there was no evidence that Rowin ever suggested to Christianson that they be so used. He further contends that the evidence was highly prejudicial because it could have influenced the jury to conclude that he was likely to have knowingly aided and abetted Christianson because he was “the sort of person who carries deadly weapons.” See *State v. Thompson*, 83 Wis. 2d 134, 144, 265 N.W.2d 467 (1978).

¶9 The trial court applied the proper test under *Sullivan*. It reasoned that the proffered evidence was relevant to and probative on the issue of intent because it could “show that Rowin was planning and preparing for a violent encounter with Mr. Stone.” It then concluded that the evidence would not be unduly prejudicial under the facts of the case.

¶10 We are satisfied the trial court’s conclusion was rational, particularly in light of Rowin’s contention that he went over to Stone’s place to work things out. See *Sullivan*, 216 Wis. 2d at 784 (“Evidence of other acts may be admitted if it tends to undermine an innocent explanation for an accused’s charged criminal conduct.”). The challenged evidence tended to show that Rowin was still thinking

about killing Stone a day before the shooting, and that he was considering using one of the hidden weapons for the crime. The fact that Rowin brought several weapons over to Christianson's house shortly before he suggested robbing Stone also tends to show that he was prepared to use violence against Stone, even though none of the guns he brought along were actually used. The evidence helped explain what Rowin was thinking on the day in question. *See State v. Pharr*, 115 Wis. 2d 334, 348-49, 340 N.W.2d 498 (1983) (permitting other acts evidence to be used to establish the background or context of a criminal act). That the jury might also have drawn negative inferences about Rowin's character from the evidence does not mean that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. In sum, we see no misuse of discretion.

By the Court.—Judgment affirmed.

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

