

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 12, 2004**

Cornelia G. Clark  
Clerk of Court of Appeals

**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.

**Appeal No. 02-2235-CR**

**Cir. Ct. No. 01-CF-226**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**DOUGLAS G. WORZELLA,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Columbia County:  
RICHARD REHM, Judge. *Affirmed.*

Before Deininger, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Douglas Worzella appeals a judgment convicting him of intentionally causing harm to his child and disorderly conduct. The issue is whether the circuit court erroneously excluded expert opinion testimony relevant to Worzella's ability to form intent. We affirm.

¶2 Expert opinion testimony is admissible if it assists the jury in understanding the evidence or determining a fact in issue. WIS. STAT. § 907.02 (2001-02).<sup>1</sup> The expert’s opinion must be based on a reasonable degree of professional probability. *Martindale v. Ripp*, 2001 WI 113, ¶59, 246 Wis. 2d 67, 629 N.W.2d 698. Whether to admit proffered expert opinion testimony is committed to the circuit court’s discretion. *State v. Hollingsworth*, 160 Wis. 2d 883, 895, 467 N.W.2d 555 (Ct. App. 1991). We accord the circuit court substantial deference in the exercise of its discretion, and “we will uphold a decision to admit or exclude evidence if the circuit court examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion.” *Martindale*, 246 Wis. 2d 67, ¶45.

¶3 Worzella sought to introduce the testimony of Dr. Russell Dixon, an associate professor of medicine at the University of Wisconsin–Madison. Worzella submitted a letter in which Dr. Dixon said that Worzella had a history of diabetes, which could cause blood sugar swings. Dr. Dixon also said that some individuals “have very severe and remarkably active and even violent reactions to low sugars.” Finally, Dr. Dixon said he did not know the circumstances that existed at the time of the alleged offenses, that he was basing his judgment on a single visit with Worzella, and that he did not know whether Worzella had ever had “any similar behavior” when he did not have low blood sugar.

¶4 In a detailed and well-reasoned oral opinion, the circuit court decided that Dr. Dixon’s opinion testimony was not admissible because:

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

(1) Worzella presented no evidence about what his blood sugar was at the time of the alleged crimes and was thus unable to establish that he was, in fact, suffering from hypoglycemia; (2) Dr. Dixon’s proffered opinion testimony did not address whether a person with a diabetic hypoglycemic reaction would lack the ability to intend an act, understand the significance of an act or control their behavior; and (3) Dr. Dixon’s opinion that low blood sugar could “possibly” have played a role during the incident was not stated with a sufficient degree of medical certainty to be relevant.

¶5 The circuit court’s decision is an example of proper discretionary decision-making. The circuit court examined Dr. Dixon’s letter, which set forth the bases for his opinions, applied a proper legal standard—noting that medical expert testimony had to be stated to a reasonable degree of medical probability—and, using a demonstrated rational process, reached a reasonable conclusion. *See Martindale*, 246 Wis. 2d 67, ¶45. Stated simply, Worzella did not show that he had hypoglycemia when the incident occurred or that, even if he did, the condition affected his ability to form the intent to cause harm to his child. Therefore, we conclude that the circuit court properly exercised its discretion in granting the State’s motion to exclude the evidence.

¶6 Worzella next contends that we should grant him a new trial in the interests of justice. *See* WIS. STAT. § 752.35. We decline to do so because the circuit court properly exercised its discretion in making its evidentiary ruling regarding Dr. Dixon and we see no other grounds that would warrant discretionary reversal.

*By the Court.*—Judgment affirmed.

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

