

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 1, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2008AP2077-CR

Cir. Ct. No. 1999CF363

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW J. KNAPP,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
RANDY R. KOSCHNICK, Judge. *Affirmed.*

Before Dykman, P.J., Lundsten and Bridge, JJ.

¶1 PER CURIAM. Matthew J. Knapp appeals a judgment of conviction for first-degree murder while using a dangerous weapon, as a habitual offender. Knapp argues that the State presented insufficient evidence to support the conviction, and that the circuit court erred when it allowed other acts evidence

to be admitted during his trial. Because we conclude that there was sufficient evidence to support the conviction, and that the circuit court properly exercised its discretion when it admitted the other acts evidence, we affirm the judgment of conviction.

¶2 In December 1987, Resa Scobie Brunner was beaten to death with a baseball bat. Her husband found her body in their home in Watertown. Knapp was charged with the crime in November 1999. The parties made a number of pretrial motions, and there were two interlocutory appeals. The case eventually went to trial in May 2006. The jury found Knapp guilty, and the court sentenced him to life in prison plus fifteen years. Knapp argues here that the evidence at trial was insufficient to support his conviction because there was no physical evidence to link him to the crime. Knapp further argues that the most compelling evidence against him was improperly admitted other acts evidence.

¶3 We consider first whether the evidence was sufficient to support Knapp's conviction. When considering a challenge to the sufficiency of the evidence, this court must affirm if it finds that the jury, "acting reasonably, could have found guilt beyond a reasonable doubt.... [T]he jury verdict will be overturned only if, viewing the evidence most favorably to the state and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt." *State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation and emphasis omitted).

[A]n appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence

adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990) (citations omitted). If more than one inference can be drawn from the evidence, the inference that supports the jury's verdict must be followed unless the evidence was incredible as a matter of law. *Alles*, 106 Wis. 2d at 377. "[I]f any possibility exists that the jury *could* have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, we will not overturn a verdict even if we believe that a jury *should* not have found guilt based on the evidence before it." *Id.*

¶4 The State presented evidence that Brunner was seen with Knapp in the evening and early morning of December 11-12, and just an hour or two before her death. Both appeared to be drunk, and they were seen arguing. The police found blood stains on Knapp's shoes, and the pattern on one shoe was consistent with "low to medium impact spatter." The blood stains were Brunner's blood type, and contained Brunner's DNA. Other evidence showed that Knapp bragged about having "killed that bitch with a baseball bat" and having beat a woman in Watertown. A few years after the murder, Knapp beat his then girlfriend, Sandra Huebner, and told her that he would "do to you like I did to her."¹ At the time Knapp said this, Huebner knew that Knapp was a suspect in Brunner's murder, and Knapp knew that Huebner knew that Knapp was a suspect.

¹ This statement generally was quoted as "I'll do to you *what* I did to her." When Huebner testified at trial, she used "like" instead of "what."

¶5 We conclude that this evidence, when viewed most favorably to the State and the conviction, supports the jury's finding that Knapp intentionally killed Brunner. Consequently, we reject Knapp's argument that there was insufficient evidence to support his conviction.

¶6 Knapp's second argument is that the circuit court erroneously exercised its discretion when it allowed the State to introduce other acts evidence. Prior to trial, the State argued that it should be permitted to introduce the statement that Knapp made to Sandra Huebner, and evidence that Knapp was being physically violent towards Huebner when he said it. This incident occurred more than six years after Brunner was killed. Knapp argued that there was no similarity between the fight with Huebner and the circumstances of Brunner's death. After hearing arguments, the circuit court determined that the statement was admissible.

¶7 The admission of other acts evidence requires a three-step analysis. The court must consider:

(1) Is the other acts evidence offered for an acceptable purpose under WIS. STAT. § (Rule) 904.04(2), such as establishing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident?

(2) Is the other acts evidence relevant, considering the two facets of relevance set forth in WIS. STAT. § (Rule) 904.01? The first consideration in assessing relevance is whether the other acts evidence relates to a fact or proposition that is of consequence to the determination of the action. The second consideration in assessing relevance is whether the evidence has probative value, that is, whether the other acts evidence has a tendency to make the consequential fact or proposition more probable or less probable than it would be without the evidence.

(3) Is the probative value of the other acts evidence 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? See WIS. STAT. § (Rule) 904.03.

State v. Sullivan, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998) (footnote omitted). We review the circuit court’s determination to admit other acts evidence for the appropriate exercise of discretion. *Id.* at 780. “A circuit court’s failure to delineate the factors that influenced its decision constitutes an erroneous exercise of discretion.” *Id.* at 781. We conclude that the circuit court conducted a thorough analysis under *Sullivan* and properly exercised its discretion when it admitted the disputed evidence.

¶8 The circuit court first determined that the statement “I’ll do to you what I did to her” was an admission by the defendant. See WIS. STAT. § 908.01(4)(b) (2007-08).² Plainly, given the context of the statement, a fact finder could find that Knapp was admitting that, at a minimum, he seriously hurt Brunner.

¶9 The court then considered whether the additional evidence—that Knapp was assaulting Huebner when he made the statement, that Knapp was a suspect in the Brunner murder, that Huebner knew Knapp was a suspect, and that Knapp knew Huebner knew he was a suspect—was necessary to set the statement in context. The court went through each step of the *Sullivan* analysis. First, the court correctly concluded that the evidence was offered for an acceptable purpose, that is, to set the statement in context. Second, the court reasonably concluded that the evidence was relevant because the beating context explained that Knapp meant he had harmed Brunner.

² All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶10 The court next correctly determined that the probative value of the evidence outweighed the danger of unfair prejudice. While there was the potential for unfair prejudice—namely, that the jurors would conclude that Knapp had a propensity to beat women—the probative value was especially strong. In effect, Knapp was admitting that he harmed Brunner, the very issue the jury was charged with determining.

¶11 We conclude that the circuit court did not erroneously exercise its discretion when it allowed this evidence to be admitted at trial. For the reasons stated, we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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

