COURT OF APPEALS
DECISION
DATED AND FILED

July 24, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2265-CR **Cir. Ct. No. 2010CF1228**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY A. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KEVIN E. MARTENS, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Jeffrey A. Williams appeals from an amended judgment, entered upon a jury's verdict, convicting him of second-degree sexual assault of an intoxicated person. He contends that the circuit court erroneously permitted his niece to testify that her family members expressed animosity

towards her because she was a witness for the State. He seeks a new trial. Because we conclude that the testimony was probative of the witness's credibility, and because the testimony did not prejudice Williams, we reject his contentions and affirm.

BACKGROUND

¶2 We take the facts from the evidence presented at trial. Williams and his niece, Telisha Williams, went to a party hosted by Martine B.[1] Ms. Williams testified that Martine B. became very intoxicated, was unable to walk upright, slurred her speech, vomited, and fell "dead [a]sleep." According to Ms. Williams, she left the party for a few minutes, and when she returned she heard someone say: "why would you do this to me? I'm drunk. Why would you do this to me?" Upon hearing these words, Ms. Williams walked into Martine B.'s bedroom and found Williams there. Ms. Williams also discovered Martine B. in a fetal position behind the door with her pants and underwear partly removed. Ms. Williams asked her uncle: "what did you do?" Williams replied that he "didn't do anything that [Martine B.] didn't want to happen." Ms. Williams called the police and drove Martine B. to a sexual assault treatment center.

¶3 The State asked Ms. Williams how the incident had affected her relationship with Williams. She responded that she loved her uncle. The examination continued, eliciting the testimony disputed on appeal:

[1] We note with concern that the State's brief identifies the victim in this case by her full name. We expect counsel to make every reasonable effort to conceal the identity of sexual assault victims. We caution the State that its briefs should in the future refer to victims of sensitive crimes by a first name and last initial to shield identity. *Cf.* WIS. STAT. RULE 809.19(1)(g) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

> Q: And has [this] affected your relationship with other family members?
>
> A: Yeah. I think –
>
> Defense Counsel: Objection. Relevance.
>
> The Court: Overruled.
>
> Q: You can answer.
>
> A: I think my uncles hate me. I think they hate me.
>
> Q: You've noticed you've had family encounters and things like that?
>
> A: Yeah.
>
> Defense Counsel: Objection.
>
> The Court: Overruled.
>
> A: I mean my other uncle is here, and he didn't say anything to me.
>
> Q: Miss Williams, despite all that you are willing to come here and tell what you observed ... despite problems with your family now?
>
> A: Yeah.

In proceedings held outside the jury's presence, the circuit court ruled that this testimony was relevant to assessing Ms. Williams's credibility.

¶4 Williams testified on his own behalf. He told the jury that he had consensual sexual intercourse with Martine B. during the night of the party and that his niece interrupted the sexual encounter. The jury rejected the consent defense and found Williams guilty of second-degree sexual assault of an intoxicated person. This appeal followed.

DISCUSSION

¶5 The admissibility of evidence lies in the circuit court's sound discretion. ***State v. Adams***, 221 Wis. 2d 1, 15, 584 N.W.2d 695 (Ct. App. 1998). We will not reverse the circuit court's decision to admit or exclude evidence absent a clear showing that the circuit court erroneously exercised its discretion. *See* ***State v. Doss***, 2008 WI 93, ¶19, 312 Wis. 2d 570, 754 N.W.2d 150.

¶6 Williams asserts that the evidence of family animosity directed at his niece was irrelevant and served only to bolster Ms. Williams's credibility unnecessarily when he had not challenged it. We reject his contentions.

¶7 Relevant evidence is evidence that tends "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." WIS. STAT. § 904.01. '"A witness's credibility is always 'consequential' within the meaning of WIS. STAT. § 904.01.'" ***State v. Marinez***, 2011 WI 12, ¶34, 331 Wis. 2d 568, 797 N.W.2d 399 (citation to treatise omitted). Accordingly, the State may elicit "a disclosure of facts affecting [a witness's] credibility." *See* ***State v. Kaster***, 148 Wis. 2d 789, 800, 436 N.W.2d 891 (Ct. App. 1989).

¶8 In ***Kaster***, we approved a circuit court decision allowing the State to question a witness about the witness's pretrial agreement with the State. *See* ***id.*** at 799-800. The questions elicited information regarding "what the prosecution said would happen if [the witness] lied on the stand, whether [the witness] had told the truth on the stand, and what would happen if [the witness] told the truth." *See* ***id.*** at 799. We explained that this testimony was a proper disclosure of facts affecting credibility. ***Id.*** at 800. We observed: "[i]f that disclosure is 'bolstering,' then there is nothing wrong with it." ***Id.***

¶9 Disclosure that a third party pressured a witness in regard to his or her testimony similarly assists the jury in assessing the witness's credibility. *See* ***Adams***, 221 Wis. 2d at 15. In ***Adams***, we affirmed the circuit court's decision to permit a witness to testify that she received telephonic threats from an unidentified person who ordered her "to get her story straight, to defend the right person and [who] stat[ed], '[w]e know where you work and when you leave.'" ***Id.*** We explained that "evidence of threats was relevant to the issue of [the witness's] credibility." ***Id.***

¶10 The State also directs our attention to ***People v. Olguin***, 37 Cal. Rptr. 2d 596 (Cal. Ct. App. 1994). There, the California court of appeals determined that a witness properly testified about threats from third parties and the witness's resulting fear of cooperating with law enforcement. *See* ***id.*** at 600. The ***Olguin*** court reasoned that a witness's trepidation about the consequences of testifying is relevant to the witness's credibility, explaining: "[a] witness who testifies despite fear of recrimination of *any* kind by *anyone* is more credible because of his or her personal stake in the testimony." ***Id.*** at 601 (emphasis in original).[2]

[2] We note that well over a thousand courts and other authorities have cited ***People v. Olguin***, 37 Cal. Rptr. 2d 596 (Cal. Ct. App. 1994). A few of these citations appear in unpublished opinions that include the notation that ***Olguin*** was partially overruled by ***People v. Cromer***, 15 P.3d 243, 250 n.3 (Cal. 2001). Most citing sources, however, do not include this notation. *See, e.g.*, ***People v. Mendoza***, 263 P.3d 1, 24 (Cal. 2011). Our review of ***Cromer*** discloses that its footnote number three lists twelve cases with language disapproved by the opinion and that ***Olguin*** is not among them. *See* ***Cromer***, 15 P.3d at 250 n.3. Further, neither of the recognized citator services used by this court assess ***Olguin*** as overruled on any ground. Nonetheless, we question why the State, in referring us to ***Olguin***, did not call our attention to and address potential questions about the weight of this authority.

¶11 The foregoing authorities are persuasive in the instant case. We therefore conclude that the circuit court properly exercised its discretion in determining that the evidence of family animosity directed at Ms. Williams was relevant to assessing her credibility.

¶12 Relevant evidence may be excluded, of course, "if its probative value is substantially outweighed by the danger of unfair prejudice." *See* WIS. STAT. § 904.03. Here, however, Williams's testimony that her family members treated her with hostility was not unduly prejudicial. As we similarly observed in ***Adams***, the contested evidence was not linked to the defendant. *See* ***Adams***, 221 Wis. 2d at 15. Although Williams hypothesizes that the jury may have concluded that he influenced his relatives, nothing in the record supports this speculative theory. Thus, Williams does not show that the testimony "reflect[ed] badly on his character or prejudiced his case." *See* ***id.*** at 16. Accordingly, he fails to demonstrate any unfair prejudice arising from admission of the evidence.

¶13 In sum, the evidence of family animosity directed at Ms. Williams was relevant to the consequential issue of her credibility as a witness, and the evidence did not unfairly prejudice Williams. We affirm.

By the Court.—Judgment affirmed.

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