

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 5, 2012

Diane M. Fremgen
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. 2011AP2435-CR

Cir. Ct. No. 2010CF243

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICHARD JAMES STEISKAL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Barron County: JAMES C. BABLER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Richard Steiskal appeals a judgment convicting him of false imprisonment, and that part of a circuit court order denying his postconviction motion. Steiskal contends he is entitled to reversal of the conviction and a new trial on the ground that he suffered compelling prejudice

from evidence presented to support a conviction that was vacated by the circuit court. We reject this argument and affirm both the judgment and order.

BACKGROUND

¶2 The State charged Steiskal with obstructing an officer, false imprisonment, substantial battery and strangulation—the charges arising from an altercation between Steiskal and his then-girlfriend, Michelle Michalski. At trial, Michalski testified that she and Steiskal worked at a carnival in Barron County and slept in “the back cab” of a semi-truck. Michalski explained that in back of the truck’s two front seats was an area with two chairs and a refrigerator, and above the front seats was a single bed that was approximately shoulder height.

¶3 On the evening of July 13, 2010, the couple argued because Steiskal learned Michalski had cheated on him. Michalski returned to the truck and was sleeping when Steiskal aggressively pulled her onto the floor. Steiskal then hit her in the face three or four times and shook her, banging her head on the wall. Michalski testified that she tried to leave the truck, but Steiskal would not let her leave. She stated that she ended up sleeping in the bed, while Steiskal stayed on the floor, between her and the door.

¶4 A sheriff’s deputy testified that he received a call reporting an altercation between two carnival workers, Rick and Shelly, and that Shelly was being held against her will. When the deputy arrived at the truck, a man later identified as Steiskal opened the truck door and answered affirmatively when the deputy asked if his name was Rick. When asked to give his full name, however, Steiskal indicated his name was “Steven Zwacki.” The officer eventually ascertained Steiskal’s true identity and, after learning there was an active warrant for his arrest, took Steiskal into custody.

¶5 In Steiskal's presence, Michalski told the deputy that nothing had happened between the two of them. Michalski, however, telephoned the officer as he left the fairgrounds and said Steiskal had beaten her up, though she did not want to say that in front of Steiskal. Another officer testified that when she met with Michalski the next day, Michalski had bruising on her face and arms. The officer further testified that Michalski told her Steiskal choked her four to five times. The officer transported Michalski to the hospital.

¶6 Michalski testified that she received treatment and later had surgery to repair a hole in her eardrum. Michalski further testified that her jaw was injured and answered "yes" when asked if something was broken in her jaw. The State, however, produced no medical reports or expert testimony to establish that Michalski's jaw was broken. A jury found Steiskal guilty of obstructing an officer, false imprisonment and substantial battery, but not guilty of strangulation.

¶7 Steiskal moved for postconviction relief seeking a new trial on the ground he was denied the effective assistance of trial counsel. Steiskal argued, in relevant part, that counsel should have objected to the substantial battery charge because it was based on the allegation that Michalski had a broken jaw, yet there was no medical evidence that she had broken bones. Steiskal further argued that if the court vacated the substantial battery conviction, it should also vacate the false imprisonment conviction. After a hearing, the court vacated the substantial battery conviction, concluding that counsel was ineffective by failing to impeach Michalski's broken jaw claim with the lack of medical evidence. The court denied

Steiskal's request to vacate the false imprisonment conviction and this appeal follows.¹

DISCUSSION

¶8 Steiskal contends he is entitled to a new trial on the false imprisonment conviction because he suffered compelling prejudice from the evidence relating to the substantial battery charge. Steiskal's argument relies on the doctrine of retroactive misjoinder, as recognized in *State v. McGuire*, 204 Wis. 2d 372, 556 N.W.2d 111 (Ct. App. 1996). Under the doctrine of retroactive misjoinder, joinder that was initially proper may be rendered improper by later developments, such as dismissal of one of the counts. *Id.* at 379. In order to obtain relief under this doctrine a defendant must show he or she has suffered compelling prejudice. *Id.* A defendant has suffered compelling prejudice if there is prejudicial spillover from evidence that was admitted to prove a dismissed count. *Id.* In determining whether there has been prejudicial spillover, we consider three factors:

(1) whether the evidence introduced to support the dismissed count is of such an inflammatory nature that it would have tended to incite the jury to convict on the remaining count; (2) the degree of overlap and similarity between the evidence pertaining to the dismissed count and that pertaining to the remaining count; and (3) the strength of the case on the remaining count.

Id. at 379-80.

¶9 With respect to the first factor, Steiskel argues that the evidence pertaining to the substantial battery was "far more inflammatory than the false

¹ Steiskal challenges only his false imprisonment conviction on appeal.

imprisonment evidence,” and would tend to cause the jury to convict Steiskal of false imprisonment. Steiskel contends that in contrast to the lengthy testimony about the alleged battery, Michalski’s testimony regarding the false imprisonment was shorter, more equivocal and less dramatic. Steiskal argues that if the charges had not been joined, the only evidence the jury would have heard in the false imprisonment case was Michalski’s testimony that Steiskal prevented her from leaving the truck. To that end, Steiskal claims that Michalski hedged on testimony regarding the false imprisonment.

¶10 Steiskal emphasizes the following trial testimony by Michalski:

Q: Did he do anything physically, at the time when you finally crawled up there and went back to sleep, did he do anything that prohibited you from leaving?

A: Yeah, he slept on the bottom part. I don’t know, I fell asleep. I don’t know.

Q: Do you remember telling [the police] that he laid down and fell asleep, blocking the door so that you couldn’t—

A: That is where he laid, on the bottom part, you know.

Q: Did that prevent you from leaving?

A: I wasn’t going to try to leave, if that’s what you’re asking, no.

Steiskal further notes that although Michalski testified that another carnival worker knocked on the truck door telling the couple to “cut it out,” she did not tell the worker to call the police, nor did she call for help when she saw an officer driving slowly by the truck.

¶11 What Steiskal deems to be equivocal testimony, however, must be viewed in context of Michalski’s entire testimony, and that context is provided by evidence of the battery. As the State properly maintains, the evidence relating to

the battery was relevant to the false imprisonment charge and would have been admissible even if the charges had not been joined.

¶12 Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” WIS. STAT. § 904.01 (2009-10).² Evidence that may not directly prove an element of a crime may be admissible to provide context for the charged crime. *See State v. Shillcut*, 116 Wis. 2d 227, 236-37, 341 N.W.2d 716 (Ct. App. 1983). In *State v. Payano*, 2009 WI 86, ¶73, 320 Wis. 2d 348, 768 N.W.2d 832, our supreme court concluded that other acts evidence was admissible because it “provided the jury with a greater understanding of the alleged circumstances behind the charged crime.” Here, evidence of the battery puts the couple’s actions in context and provides an explanation for why Michalski did not attempt to call for help or attempt to leave. From Michalski’s perspective, calling for help or attempting to leave could have further enraged the man who had been beating her for “about two hours.”

¶13 While Steiskal concedes in his reply brief that the battery evidence “may” give context to the false imprisonment charge, he nevertheless argues that the evidence would not have been admissible as its probative value is substantially outweighed by the danger of unfair prejudice or misleading the jury. *See* WIS. STAT. § 904.03. We are not persuaded that the highly probative value of this context evidence was substantially outweighed by any danger of unfair prejudice or misleading the jury. Moreover, we cannot ignore the fact that the jury found Steiskal not guilty of the strangulation charge. If the substantial battery evidence

² All references to the Wisconsin Statutes are to the 2009-10 version.

was so inflammatory as to incite the jury to convict, it reasonably follows that the jury would have found him guilty of all charges. We therefore reject Steiskal's claim that the jury was improperly incited to find him guilty of false imprisonment.

¶14 Turning to the second factor, the degree of overlap and similarity between the evidence for each count, Steiskal notes that although the false imprisonment and substantial battery allegations arose out of one incident, evidence as to one charge should not have been admissible as to the other. Pointing out the different elements for each crime, Steiskal asserts:

Michalski's testimony that Steiskal struck and shook her is not relevant to whether Steiskal slept between her and the door of the camper, presumably to keep her from leaving. Evidence tending to establish that Steiskal intentionally caused bodily harm to Michalski would not also establish that he unlawfully prevented her from leaving.

As noted above, however, evidence of the alleged battery was highly relevant to provide context to the false imprisonment charge.

¶15 Steiskal nevertheless contends the jury could have blended the charges together, or concluded that if Steiskal battered Michalski, he likely restrained her as well. We are not persuaded. The jury was instructed on the different elements for each offense and, as the State notes, the case was not complicated. We presume that the jury followed the court's instructions and evaluated each alleged offense on the specific evidence attributed to it. *See State v. Truax*, 151 Wis. 2d 354, 362, 444 N.W.2d 432 (Ct. App. 1989).

¶16 With respect to the final factor, the strength of the case on the remaining count, Steiskal argues that the State's false imprisonment case was weak. We disagree. Steiskal again focuses on what he deems to be equivocal

testimony by Michalski, noting that she never testified specifically how Steiskal intentionally confined her to the truck. Michalski testified, however, that she tried to leave while Steiskal was battering her, but “[h]e just wouldn’t let me out.” When Michalski ultimately got into the bed, Steiskal laid on the floor between her and the door. The jury also heard an officer’s testimony that Michalski reported “she didn’t think she was ever going to get out of there.” Because the State’s case on the false imprisonment charge was quite strong, the third *McGuire* factor does not favor Steiskal.

¶17 Based on our consideration of the *McGuire* factors, we conclude there was no prejudicial spillover from the evidence supporting the substantial battery and, therefore, Steiskal did not suffer compelling prejudice justifying a new trial on the false imprisonment conviction.

By the Court.—Judgment and order affirmed.

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

