

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 11, 2015

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 Nos. 2015AP451-CR
2015AP452-CR**

**Cir. Ct. Nos. 2012CM5674
2012CM6309**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RANDALL RAY MADISON,

DEFENDANT-APPELLANT.

APPEALS from a judgment and an order of the circuit court for Milwaukee County: LINDSEY CANONIE GRADY, Judge. *Affirmed.*

¶1 BRADLEY, J.¹ Randall Ray Madison appeals from a judgment entered after a jury found him guilty of violating a domestic abuse injunction,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

obstructing or resisting an officer, and bail jumping, contrary to WIS. STAT. §§ 813.12(4), 968.075(1)(a), 946.41(1) and 946.49(1)(a) (2011-12). He also appeals the order denying his postconviction motion seeking dismissal or a new trial. Madison claims: (1) he was prejudiced when the State mentioned an incorrect date during its rebuttal closing; and (2) the trial court erroneously exercised its discretion when it refused to allow Madison to testify that the victim was “stalking him.” Because Madison was not prejudiced by the State’s reference to an incorrect date in its closing, and because the trial court properly excluded Madison’s unsupported accusations against the victim, this court affirms.

BACKGROUND

¶2 On October 8, 2012, the victim obtained a domestic abuse injunction that prohibited Madison from having any contact with her, her residence and any location temporarily occupied by her. The residence at issue here was a duplex owned by her mother, who resided in the lower unit. The victim used the upper unit. The duplex address was 2413-2415 North 40th Street in Milwaukee. On October 23, 2012, Madison was arrested for violating the injunction by being at the duplex, and for resisting police by refusing to answer the door or come out of the residence. The police had to pry open the door to enter. Madison was hiding in a closet in the lower unit and had to be escorted out of the residence. Madison was released on bail on the condition that he have no contact with the victim or her residence.

¶3 On November 12, 2012, the victim again called police to her residence because Madison was there. Madison again hid in a closet when police arrived. Police arrested him and the State charged Madison with bail jumping.

¶4 In May 2013, the State charged Madison with violating a domestic abuse injunction and two counts of bail jumping related to an incident on May 7, 2013, where, according to the victim, Madison again violated the no contact orders by being in the yard at her residence. The victim did not call police to the residence on May 7, 2013, because, according to her, Madison quickly left. Instead, she went to the police station to report the May 7 violation.

¶5 All three cases were consolidated for trial. Madison testified in his own defense. His defense theory was that he could be at the residence as long as he did not go in the upper unit. In both October and November, Madison was visiting with the mother in the lower unit and was not in the upper unit that the victim used. Madison also denied the May 7, 2013 incident entirely. During Madison's testimony, his attorney asked him "What's the problem with" the "injunction [that] basically said you have to stay away from her?" Madison answered: "The problem with that is that she stalks me." The State objected, the court held an off-the-record sidebar, and then struck both the question and Madison's answer.

¶6 During the State's rebuttal closing argument, Madison objected when the State said: "And how do we know that he was there on May 7th? How do we know he was there on the 23rd and the 12th of the prior year? He's found on scene. He's hiding." Madison argued that this made it sound like he had been arrested on May 7 at the victim's residence, which was not true. The trial court initially overruled the objection, but later gave a curative instruction to clarify, explaining: "The defendant was not found ... at the 40th Street location on May 7th, 2013. No testimony (evidence) was provided to you during the trial regarding an arrest on or about May 7th, 2013." (Formatting altered.) The jury was also

instructed that the attorney's closing arguments, conclusions and opinions were not evidence.

¶7 The jury convicted Madison of the October 23, 2012 and November 12, 2012 charges, but acquitted him of all the charges based on the May 7, 2013 incident. Madison filed a postconviction motion seeking dismissal or a new trial, which the trial court denied. He now appeals.

DISCUSSION

A. *Reference to May 7 in State's Rebuttal Closing.*

¶8 Madison argues the State's reference to May 7 in its rebuttal closing prejudiced him because it may have caused the jury to erroneously believe he was arrested on May 7 at the victim's residence, and allowed the State to make an argument based on facts that were not true. This court rejects Madison's arguments.

¶9 "A prosecutor's closing argument is improper when it so infects the trial with unfairness as to make the conviction a denial of due process." *State v. Adams*, 221 Wis. 2d 1, 19, 584 N.W.2d 695 (Ct. App. 1998). That was not the case here. First, the statement came during the prosecutor's rebuttal closing argument. The jury was instructed that the attorneys' arguments were not evidence, and the trial court gave a curative instruction specifically on the prosecutor's incorrect reference to May 7. This court presumes that juries follow instructions, *see State v. Martinez*, 2011 WI 12, ¶41, 331 Wis. 2d 568, 797 N.W.2d 399, and as a result, the jury did not use the misstatement in reaching its verdict. Second, the jury acquitted Madison of all the charges relating to the May 7 incident. This shows the jury based its decision on the evidence, and the

prosecutor's inaccurate reference to May 7 had no prejudicial effect whatsoever. *See State v. Marcum*, 166 Wis. 2d 908, 926, 480 N.W.2d 545 (Ct. App. 1992) (acquittal shows jury was not prejudiced by improper information).

B. *Exclusion of Evidence that the Victim Stalked Madison.*

¶10 Madison also complains the trial court erroneously exercised its discretion by excluding his testimony that the victim stalked him, making it difficult for him to abide by the injunction and no contact orders. The trial court explained its reason for excluding such evidence:

[T]he court struck the testimony because the defendant did not file a motion to admit other acts evidence of this nature before trial and, more importantly, he could not offer anything to substantiate his stalking claim. Under the circumstances, the court would not allow the defense to put in evidence with such highly prejudicial value. In any event, the issue in these cases was *the defendant's* noncompliance with the injunction and no contact orders on the dates that these offenses were allegedly committed. There is no reasonable probability that the jury would have acquitted the defendant of all charges based upon the defendant's general and unsubstantiated claim that the victim was stalking him.

(Emphasis in original.) A trial court's decision to admit or exclude evidence is discretionary and this court will not overturn the trial court's decision if the trial court reviewed the relevant facts, applied the proper standard of law and used a rational process to reach a reasonable conclusion. *See State v. Davidson*, 2000 WI 91, ¶53, 236 Wis. 2d 537, 613 N.W.2d 606.

¶11 The trial court's discretionary decision here complied with the requisite standard. Aside from Madison's attempt to testify that the victim was stalking him, there is no support whatsoever for his allegation. Madison did not submit any facts or instances in support of his testimony, nor did he file a motion

to admit other acts evidence of this nature. He did not provide any offer of proof, evidence, affidavit, or documentation at the trial court level or with this court to show any basis for his claim that the victim stalked him. Accordingly, the trial court's decision to exclude his testimony in this regard was not erroneous.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

