

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 23, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-1121

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JERRY P. KOENIG,

PLAINTIFF-RESPONDENT,

v.

JOHN H. AHRENS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Barron County:
JAMES C. EATON, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. John Ahrens appeals a judgment that awarded Jerry Koenig damages in his civil battery lawsuit, after a jury trial. Ahrens attacked and injured Koenig in a bar fight. On appeal, Ahrens makes three basic arguments: (1) the trial court wrongly admitted evidence surrounding Ahrens' arrest at the fight scene; (2) the trial court wrongly excluded evidence of Ahrens'

acquittal in a criminal battery prosecution for the same fight; and (3) the trial court should have admitted the acquittal to put the prior arrest in context for the jury. The trial court's decision in each instance was discretionary, and we will not reverse such decisions absent an erroneous exercise of discretion. *See State v. Brecht*, 143 Wis.2d 297, 320, 421 N.W.2d 96, 105 (1988). We reject Ahrens' arguments and affirm the judgment.

First, Ahrens cannot challenge the admission of his battery arrest because he stipulated to information about his arrest, making those facts admissible as a matter of law. Second, Ahrens had no right to introduce his acquittal on the criminal battery charges. As the trial court ruled, the acquittal was irrelevant. Litigants may introduce only evidence that tends to prove a fact of consequence to the trial. *See State v. Sullivan*, 216 Wis.2d 768, 785, 576 N.W.2d 30, 38 (1998). The criminal and civil cases used different burdens of proof, and Ahrens' acquittal under the greater criminal burden had no tendency to prove any consequential fact in a civil case with its lesser burden. *Cf. Carson v. Pape*, 15 Wis.2d 300, 308, 112 N.W.2d 693, 697-98 (1961) (acquittal has no res judicata effect in civil case).

Last, Ahrens' acquittal would not have put the arrest in context. Trial courts have discretion to admit evidence for background purposes. *See State v. Shillcutt*, 116 Wis.2d 227, 236-37, 341 N.W.2d 716, 720 (Ct. App. 1983). Fairness, as embodied in the "rule of completeness," bars parties from introducing partial, out-of-context evidence that leaves an inaccurate impression. *See United States v. Wilkerson*, 84 F.3d 692, 696 (4th Cir. 1996). Here, there was no unfairness. Any relevance the acquittal had would relate to the prosecution, not the arrest, and no one introduced evidence of the prosecution. Moreover, litigants cannot stipulate to facts and then claim that they need additional evidence to

explain those facts. *Cf. State v. McDonald*, 50 Wis.2d 534, 538, 184 N.W.2d 886, 888 (1971) (litigants bound by deliberate choice of strategy). In short, we have no basis to reverse the judgment.

By the Court.—Judgment affirmed.

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

