

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 24, 2004**

Cornelia G. Clark  
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. 03-1203-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 01CF000089**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JOHN V. GROSS, JR.,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Juneau County:  
JOHN W. BRADY, Judge. *Affirmed.*

Before Dykman, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. John Gross appeals a judgment of conviction. The issue relates to other-acts evidence. We affirm.

¶2 Gross was convicted of one count of first-degree intentional homicide as a party to the crime. The victim was a three-year-old child. On

appeal, Gross argues that the circuit court erred by admitting certain evidence that he had committed violent acts against other children. He first argues that the court erred by rejecting his proposed *Wallerman* stipulation that would have made the evidence unnecessary. See *State v. Wallerman*, 203 Wis. 2d 158, 167-68, 552 N.W.2d 128 (Ct. App. 1996). However, as the State correctly points out, the State may reject stipulations that otherwise comply with the test presented in *Wallerman*, except as to stipulations about the defendant's "status," such as prior convictions. See *State v. Veach*, 2002 WI 110, ¶¶123-24, 255 Wis. 2d 390, 648 N.W.2d 447. The evidence in this case did not concern Gross's status. At the hearing on the issue, the prosecutor argued against the stipulation and the circuit court rejected the stipulation. Accordingly, we conclude that the circuit court properly rejected Gross's *Wallerman* stipulation.

¶3 Gross may also be arguing that, even without the *Wallerman* stipulation, the other-acts evidence was not properly admissible because there was no purpose for the evidence other than to suggest that he acted in conformity with his character shown by the earlier events. The test for admitting other-acts evidence is described in *Veach*, 255 Wis. 2d 390. Under WIS. STAT. § 904.04(2) (2001-02),<sup>1</sup> other-acts evidence is admissible to show, among other things, intent and absence of mistake or accident. See *Veach*, 255 Wis. 2d 390, ¶50. We conclude that these were proper purposes in this case. Injuries to small children commonly occur as a result of accident, and the evidence of Gross's previous incidents tends to make the possibility of accident less probable in this case.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

*By the Court.*—Judgment affirmed.

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

