

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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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. 2024AP1950-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2019CF521

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AMBER M. LUNDGREN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
MICHAEL P. SCRENOCK, Judge. *Affirmed.*

Before Blanchard, Kloppenburg, and Nashold, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Amber Lundgren appeals a judgment of conviction entered after a jury found her guilty of first-degree intentional homicide and

carrying a concealed weapon. Lundgren argues that the circuit court erroneously exercised its discretion when it denied her motion to admit evidence of the victim's "sexual proclivities" and when it denied her motion to admit evidence that the victim had told others that he had post-traumatic stress disorder (PTSD). We reject Lundgren's arguments and affirm.

BACKGROUND

¶2 Lundgren was charged with first-degree intentional homicide and with carrying a concealed weapon. At a jury trial, it was undisputed that Lundgren shot and killed Christopher Lytle; at issue was whether Lundgren did so in self-defense.

¶3 The evidence at trial showed the following. Lytle and Lundgren had been in a romantic relationship in the past, but had not seen each other in years. On the night that Lundgren shot Lytle, the two met at a casino outside Wisconsin Dells. Lytle got into Lundgren's car and the two drove to a gravel turn-around area off a dead-end road in a remote, wooded location. At that location, Lundgren shot Lytle twice, once in the back of the neck and once in the back of the head. Lundgren did not call the police. When police questioned Lundgren, she told them various lies, including initially that she had not seen Lytle in years. She eventually told police that she shot Lytle to prevent him from sexually assaulting her.

¶4 The State's theory of the case was that Lundgren shot Lytle in order to show her commitment to her ex-husband. Lundgren and her ex-husband divorced because of affairs during their marriage that Lundgren had with other men, including with Lytle, but Lundgren and her ex-husband continued to live together and have a sexual relationship after their divorce. Shortly before

Lundgren killed Lytle, Lundgren's ex-husband had started seeing a different woman. The State argued that Lundgren shot Lytle to prove to her ex-husband that she loved him and to atone for her earlier infidelity.

¶5 Consistent with this theory, the State presented evidence showing that Lundgren, approximately six weeks before she shot Lytle, arranged to meet with a different man with whom she had had an affair while she and her ex-husband were married. The man testified that he met Lundgren at a boat landing and that Lundgren asked him to delete all of their text messages from his phone, which he did. While they were talking, Lundgren's ex-husband came out of the surrounding woods with a metal pipe, forced the man to the ground, shoved the man's face into the gravel, threatened to kill the man, made the man throw his phone as far as he could, smashed the windshield of the man's truck, and told the man that it was because the man had slept with Lundgren. The man also testified that Lundgren's ex-husband told the man that Lundgren's ex-husband "ha[d] to go visit five or six other guys that slept with [Lundgren]." Lundgren and her ex-husband drove away together in Lundgren's car.

¶6 The State also introduced evidence that Lundgren sent a Facebook message to her ex-husband a few weeks after the shooting, in which she responded to her ex-husband's message that he was "hurt" and needed "reassurance" by stating, "Even though I have shown you my commitment, I will continue to do whatever it takes to show you that I want you and only you, no one else, so please let me continue to show you ... I am 100 percent committed, loyal, head-over-heels recklessly in love with you."

¶7 Lundgren's theory of the case was that she acted in self-defense to prevent Lytle from sexually assaulting her. She testified that after Lytle got in the

car, he began making sexual advances that became increasingly forceful. She also testified that when they reached the turn-around area, she told him that she did not want to have sex; that he became violent and dragged her out of the car; and that a struggle ensued, which ended with her pushing him away from her, grabbing a gun from inside her purse, and shooting him while he was turned away from her after being pushed.

¶8 The defense called as a witness a woman with whom Lytle had been in a romantic relationship, who testified that he sexually assaulted her during their relationship and that he would take her to the same turn-around area to have sex. To undermine the defense's theory of the case, the State called as witnesses several women with whom Lytle had been in romantic relationships, including his ex-wife and his girlfriend at the time of his death, who testified that Lytle was not aggressive, that they were never afraid of him, and that they were not afraid to tell him no when he wanted to engage in sexual activity.

¶9 Before trial, Lundgren moved to admit text-message exchanges that Lytle had with several women, which Lundgren argued would show Lytle's "sexual proclivities" and corroborate Lundgren's version of events. Lundgren also moved to admit statements that Lytle made to others that he had PTSD, and expert testimony that PTSD could cause increased sexual aggression. The circuit court denied both motions.

¶10 The jury found Lundgren guilty of first-degree intentional homicide and carrying a concealed weapon. Lundgren appeals.

DISCUSSION

¶11 Lundgren argues that the circuit court erroneously exercised its discretion in denying her motion to admit as other-acts evidence text messages showing Lytle’s “sexual proclivities” and in denying her motion to admit evidence that Lytle had told others that he had PTSD.¹ We address, and reject, each argument in turn.

I. Evidence regarding Lytle’s sexual proclivities

¶12 Lundgren contends that the circuit court erroneously exercised its discretion when it denied Lundgren’s motion to admit evidence of Lytle’s “sexual proclivities” as evidence of other wrongs, crimes, or acts (“other-acts evidence”) under WIS. STAT. § 904.04(2) (2023-24).² We conclude that the court did not erroneously exercise its discretion.

¶13 WISCONSIN STAT. § 904.04(2)(a) states, in part:

[E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Our supreme court has articulated a three-step analysis for determining whether other-acts evidence is admissible. *State v. Sullivan*, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998). First, to be admissible, the other-acts evidence must be offered

¹ Lundgren does not challenge the circuit court’s exclusion of expert testimony that PTSD could cause sexual aggression, and we accordingly do not address that ruling further.

² All references to the Wisconsin Statutes are to the 2023-24 version.

for an acceptable purpose under § 904.04(2). **Id.** Second, the other-acts evidence must be relevant under WIS. STAT. § 904.01. **Id.** And third, the probative value of the other-acts evidence must not be substantially outweighed by the risk of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence under WIS. STAT. § 904.03. **Id.**

¶14 “We review a circuit court’s admission of other-acts evidence for an erroneous exercise of discretion.” **State v. Marinez**, 2011 WI 12, ¶17, 331 Wis. 2d 568, 797 N.W.2d 399. We will uphold the court’s ruling if it “‘examined the relevant facts, applied a proper standard of law, used a demonstrated rational process, and reached a conclusion that a reasonable judge could reach.’” **Id.** (quoting **State v. Hunt**, 2003 WI 81, ¶34, 263 Wis. 2d 1, 666 N.W.2d 771). We look for reasons to sustain a circuit court’s discretionary decision, and will not substitute our discretion for that of the circuit court. **State v. Johnson**, 2021 WI 61, ¶34, 397 Wis. 2d 633, 961 N.W.2d 18.

¶15 Here, the evidence that Lundgren sought to admit, and which she argues on appeal was erroneously excluded, was comprised of text-message exchanges that Lytle had with four women. Lundgren characterizes these exchanges as showing Lytle’s “sexual proclivities.” Specifically, the text messages were with women whom Lytle met on what Lundgren describes as “dating or hook-up sites or apps.” The messages include Lytle proposing to exchange marijuana for sex or sex acts; expressing a desire to use a belt on a woman during sex and have her be his “sub,” or submissive; proposing to one of the women that they have sex on a backroad; and asking another woman if she had ever had sex in a car. Lytle sent the messages to multiple women at a time, including when he was in a relationship with his girlfriend.

¶16 As stated, Lundgren’s theory of the case was that she shot Lytle in self-defense because she believed that Lytle was going to sexually assault her. Consistent with this theory, Lundgren sought to admit the text-message exchanges to show Lytle’s allegedly high “libido and his capacity for sexual aggression” and that Lytle “had a significant sex drive, that he was interested in rough sex, that he was interested in sex in cars and on back roads, and that he used marijuana as a tool to get women to acquiesce to his preferences.” Lundgren argued that the text messages were admissible under WIS. STAT. § 904.04(2)(a) for the purpose of showing Lytle’s motive, intent, plan, and knowledge in attempting to sexually assault her. Lundgren further argued, as pertinent here, that the messages corroborated her version of the events in that she claimed that Lytle insisted that she smoke marijuana with him and that he was aggressive in his sexual advances. Regarding steps two and three of the **Sullivan** analysis, Lundgren argued that the messages were relevant because they made her version of events more likely, that the messages were “exceptionally probative,” and that “it [was] not clear what if any unfair prejudice the [S]tate could suffer.”³

¶17 The circuit court denied Lundgren’s motion to admit the text messages. Under the first step of the **Sullivan** analysis, the court determined that the messages were admissible under WIS. STAT. § 904.04(2)(b) to show Lytle’s “intent or plan on the night that he met with Ms. Lundgren,” although the court indicated that it was a close call. The court explained that the messages were admissible to show that Lytle intended or planned to “have sex with

³ In the circuit court, Lundgren also argued that the text messages were admissible to show “a pertinent trait of character of the victim” under WIS. STAT. § 904.04(1)(b) and as panorama evidence. She does not renew these arguments on appeal, thereby abandoning them.

Mrs. Lundgren,” “ingest marijuana with her for the purpose of enhancing that experience,” and “engage in sexual activity ..., perhaps ... in a vehicle.”

¶18 Under the second step, the circuit court determined that the messages were relevant, although the court recognized that whether the messages were relevant could depend on the parties’ theories of the case, and whether there was a dispute as to why Lytle and Lundgren met that night.

¶19 Under the third step, however, the circuit court ruled that the probative value of the messages was substantially outweighed by the danger of unfair prejudice. The court determined that the probative value of the evidence with respect to Lundgren’s defense was “very, very low.” The court reasoned that, based on its understanding of the evidence that would be presented at trial, there did not appear to be any dispute that Lytle wished to engage in consensual sexual activity with Lundgren. Further, the court noted that the messages did not show that Lytle sought to engage in nonconsensual sexual activity with women. On the other side of the scales, the court determined that the messages “ha[d] the potential of presenting the victim in this case in a supremely negative light ... and allowing [the jury] to perhaps think that he got what he deserved because he had these really weird and out-of-the-mainstream sexual desires that he would seek to act on.” Based on the court’s determination that the messages’ low probative value was substantially outweighed by the danger of unfair prejudice, the court denied Lundgren’s motion to admit the messages.

¶20 We conclude that the circuit court properly exercised its discretion in denying Lundgren’s motion. The court examined the relevant facts, applied the proper standard of law, and reasonably concluded that the messages had only minimal probative value and that any probative value they had was substantially

outweighed by the danger of unfair prejudice. That is, the court reasonably concluded that, because the texts only showed Lytle’s interest in what Lundgren herself describes on appeal as “consensual kink practices,” they did little to support Lundgren’s claim that she shot Lytle in self-defense to prevent him from sexually assaulting her. The court had a reasonable basis to conclude that the messages could unfairly prejudice the State because the jury might view Lytle negatively. And the court reasonably concluded that any probative value was substantially outweighed by the danger that the State would be unfairly prejudiced. In sum, the court’s ruling “was a quintessential judgment call of the type [that appellate courts] rely on circuit courts to make every day,” and “was a reasonable call within the bounds of the law.” See **Johnson**, 397 Wis. 2d 633, ¶36. We reject Lundgren’s arguments to the contrary.

¶21 Lundgren argues that if Lytle expected to have consensual sex, that actually increases the messages’ probative value.⁴ However, the court reasonably explained that, because the messages all “reference consensual sexual activity,” they have only minimal probative value. They do little to undermine the State’s theory of the case or to provide support for Lundgren’s claim that Lytle tried to sexually assault her and that she therefore acted in self-defense.

¶22 Lundgren also argues that the messages are “highly relevant” because they show Lytle’s “method of operation”—to “ply with drugs and alcohol” in order to “turn a no into a yes.” This assertion is unsupported because the messages do not show this. To the contrary, as observed by the circuit court

⁴ As part of this argument, Lundgren appears to argue that the text messages were probative because they show that Lytle liked to have sex at the particular location that Lytle was killed. However, these messages do not show that Lytle used this location to have sex.

and as Lundgren appears to concede elsewhere in her briefing, the messages do not show that Lytle’s “sexual proclivities” include nonconsensual sex.

¶23 Lundgren also attempts to minimize the prejudice that the circuit court could reasonably fear might result from evidence of Lytle’s marijuana use and “consensual kink practices,” and argues that these are not likely to “provoke a jury’s instinct to punish.” But again, Lundgren fails to show that the court’s determination was not “a reasonable call within the bounds of the law.” See *id.*, ¶36.

¶24 Finally, in support of her position, Lundgren relies on *Johnson*. *Id.*, ¶34. In *Johnson*, our supreme court upheld a circuit court’s decision to exclude other-acts evidence that a homicide victim had child pornography on his computer. *Id.*, ¶¶1, 11, 34-36. Lundgren argues that the child pornography in *Johnson* was more prejudicial than the text messages that she sought to admit. However, even if we assume that the evidence here was less prejudicial than that in *Johnson*, *Johnson* does nothing to support Lundgren’s argument that the circuit court could not reasonably determine that the messages’ probative value was substantially outweighed by the danger of unfair prejudice.

¶25 In sum, we conclude that the circuit court did not erroneously exercise its discretion when it denied Lundgren’s motion to admit the text messages as evidence of Lytle’s sexual proclivities.⁵

⁵ Lundgren also raises two arguments that we reject because Lundgren raises them for the first time in her reply brief. First, Lundgren argues that the circuit court determined that the messages had low probative value based on the court’s mistaken conclusion that bolstering Lundgren’s credibility was not a permissible purpose pursuant to which the messages could be admitted under WIS. STAT. § 904.04(2)(a). Second, Lundgren argues that the court, in denying her motion to admit the messages, incorrectly assumed that it would be undisputed at trial that

(continued)

II. *Lytle's statements regarding PTSD*

¶26 Lundgren argues that the circuit court erred when it ruled that statements that Lytle made to others that he had PTSD were not subject to a hearsay exception as statements about Lytle's then-existing state of mind under WIS. STAT. § 908.03(3).

¶27 Although a circuit court's decision to admit a hearsay statement is generally discretionary, a circuit court erroneously exercises its discretion if its ruling is based on error of law. See **State v. Peters**, 166 Wis. 2d 168, 175, 479 N.W.2d 198 (Ct. App. 1991); **State v. Joyner**, 2002 WI App 250, ¶16, 258 Wis. 2d 249, 653 N.W.2d 290. "Whether a statement is admissible under a hearsay exception ... is a question of law that we review de novo." **Joyner**, 258 Wis. 2d 249, ¶16. We conclude that the court correctly ruled that the hearsay exception does not apply.

¶28 In the circuit court, Lundgren moved to admit statements that Lytle made to others that he had PTSD, arguing that the statements, although hearsay, were admissible under the exception in WIS. STAT. § 908.03(3) for a "then[-]existing state of mind." The court disagreed, and concluded that the exception did not apply. As we now explain, the court properly determined that the hearsay exception in § 908.03(3) for a then-existing state of mind does not apply.

Lundgren and Lytle met to have sex, when in fact Lundgren testified at trial that her understanding in meeting Lytle was that it was "just two old friends getting together." However, because Lundgren did not raise these arguments until her reply brief, we reject them. See **Techworks, LLC v. Wille**, 2009 WI App 101, ¶28, 318 Wis. 2d 488, 770 N.W.2d 727 ("[W]e do not consider matters argued for the first time in a reply brief because that precludes the respondent from being able to address those arguments.").

¶29 Although hearsay is generally not admissible under WIS. STAT. § 908.02, WIS. STAT. § 908.03(3) excepts, in relevant part, a “statement of the declarant’s then[-]existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health.” Lundgren argues that the hearsay exception in § 908.03(3) for a then-existing state of mind applies to Lytle’s statements that he had PTSD. In support, Lundgren lists the diagnostic criteria for PTSD, which show that PTSD can manifest as particular states of mind—for example, Lundgren’s list includes “[p]sychological distress,” “[p]ersistent and exaggerated negative beliefs or expectations,” “[p]ersistent negative emotional state,” and “[i]rritable behavior and angry outbursts.”

¶30 We reject Lundgren’s assertion that PTSD is a state of mind or physical condition for purposes of WIS. STAT. § 908.03(3)’s hearsay exception. The justification for this hearsay exception is that “[s]pecial reliability is provided by the spontaneous quality of the declarations,” which is “assured by the requirement that the declaration purport to describe a condition presently existing at the time of the statement.” KENNETH S. BROUN ET AL., 2 MCCORMICK ON EVID. § 273 (9th ed. 2025); *see also United States v. Ponticelli*, 622 F.2d 985, 991 (9th Cir. 1980) (“The state of mind declaration has probative value, because the declarant presumably knows what his thoughts and emotions are at the time of his declarations.... The state of mind declaration also has probative value, because the declarant presumably has no chance for reflection and therefore for misrepresentation.”), *overruled on other grounds by United States v. De Bright*, 730 F.2d 1255, 1259 (9th Cir. 1984) (en banc); *State v. Kutz*, 2003 WI App 205, ¶60, 267 Wis. 2d 531, 671 N.W.2d 660 (turning to federal law regarding the application of § 908.03(3) in the absence of any controlling Wisconsin case law). This justification simply does not apply to a person’s statement that the person has

a medical condition, such as PTSD. As the State argues and Lundgren does not meaningfully refute, a person can state that he or she has PTSD in many different states of mind, and the statement says little about the declarant's then-existing state of mind.

¶31 In sum, we conclude that the circuit court did not err in concluding that the hearsay exception in WIS. STAT. § 908.03(3) for a then-existing state of mind does not apply to statements that Lytle made to others that he had PTSD.⁶

CONCLUSION

¶32 For the reasons stated, we affirm.⁷

By the Court.—Judgment affirmed.

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

⁶ Lundgren briefly discusses several federal decisions from the Courts of Appeals for the Fifth and Eleventh Circuits that address tangentially related issues. However, Lundgren does not argue that those decisions support her position here, and she appears to mention them by way of explaining that there is no helpful case law on the topic. Accordingly, we do not discuss these federal decisions.

⁷ The State also argues that, if the circuit court erroneously exercised its discretion in denying Lundgren's motion to admit evidence of Lytle's sexual proclivities or erred in denying Lundgren's motion to admit Lytle's statements to others about having PTSD, any error is harmless. We need not address this argument given our conclusion that the court did not err in denying Lundgren's motions. See *Barrows v. American Fam. Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis.2d 436, 842 N.W.2d 508 (2013) (we need not address every issue when one is dispositive).

