

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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**Appeal No. 2024AP2304-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2020CF1804

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

OSCAR MARTINEZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
THOMAS J. WALSH, Judge. *Affirmed.*

Before Stark, P.J., Hruz, and Gill, 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. Oscar Martinez appeals a judgment of conviction for two counts of stalking—with one of the counts involving a victim under

age 18. Martinez argues that the circuit court erroneously exercised its discretion by allowing the State to introduce certain other-acts evidence at his jury trial. We disagree and affirm.

BACKGROUND

¶2 The State charged Martinez with one count of stalking and three counts of stalking (victim under age 18), based on events that occurred on November 2, 2020. The complaint alleged that on that date, Martinez drove his car into a “dead end” neighborhood in the Town of Ledgeview; remained for some time without conducting any legitimate business; and watched, drove past, or seemed to follow three teen girls and one adult woman.

¶3 Prior to trial, the State moved to introduce other-acts evidence, pursuant to WIS. STAT. § 904.04(2)(a) (2023-24)¹ and *State v. Sullivan*, 216 Wis. 2d 768, 576 N.W.2d 30 (1998). Namely, the State sought to introduce evidence regarding four law enforcement “incidents” involving Martinez and, additionally, Martinez’s prior convictions for lewd and lascivious behavior and disorderly conduct in Brown County Case No. 2019CM1555. The State argued that this evidence was offered for the permissible purposes of establishing Martinez’s intent, knowledge, and motive. The State further argued that the evidence was relevant to Martinez’s intent, knowledge, and motive, all three of which were “clearly ‘of consequence’” to the jury’s determination of Martinez’s guilt on the stalking charges. Finally, the State argued that the probative value of

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

the other-acts evidence was not substantially outweighed by the danger of unfair prejudice.

¶4 Martinez opposed the State’s other-acts motion. He argued that the State’s real purpose in attempting to introduce the other-acts evidence was “to smear [him] or paint him in a bad light in front of the jury” and that none of the permissible purposes for introducing the evidence listed in WIS. STAT. § 904.04(2)(a) applied. Martinez also argued that the prior acts were “completely different” from his alleged conduct in this case. In addition, he argued that even if the other-acts evidence was relevant, its probative value was substantially outweighed by the risk of unfair prejudice.

¶5 The circuit court granted the State’s motion to introduce the other-acts evidence. The court first determined that the evidence was offered for the permissible purposes of “demonstrating intent, knowledge, and motive.” More specifically, the court stated that the evidence was offered to show that Martinez “intended to engage in a course of conduct directed at the four victims in this case,” that his motive was “to specifically engage in a course of harassing conduct towards women in particular,” and that he had “knowledge that the conduct he engaged in towards the victims in this case was criminal.” The court further stated that the evidence was “relevant” and that its probative value was “not substantially outweighed by the risk of unfair prejudice.”

¶6 After the circuit court granted the State’s motion to admit the other-acts evidence, the parties stipulated that the following information regarding the other acts would be read to the jury at Martinez’s trial:

1. In Brown County Sheriff’s Office case #18-018542, on or about May 2, 2018, Deputy Todd Campbell took a complaint from a 37[-]year[-]old female who reported

she got into her car at her house in Ledgeview and a black car with one male occupant, which was parked down the road from her, began to follow her as she travelled several miles down the road and drove around the gas pumps several times. The female reportedly went inside to use the ATM and the male came into the station and walked around. Deputy Campbell explained to Mr. Martinez that someone saw him following the blonde victim around the gas station, which Mr. Martinez denied. Deputy Campbell told Mr. Martinez to stop following women around as he cannot be scaring people like that, and Mr. Martinez stated he understood.

2. In Green Bay Police Department case #19-200394, on or about January 2, 2019, Officer Jade Schneider cited Mr. Martinez for lewd and lascivious behavior for an incident at the Kroc Center in Green Bay.^[2] Officer Schneider observed via video footage that Mr. Martinez began touching himself. It was reported that Mr. Martinez was walking around the Kroc Center for three hours just walking around, not participating in any activities.
3. In Brown County Sheriff's Office case #19-09132, on or about March 12, 2019, Deputy Dustan Peterson issued Mr. Martinez a stalking warning letter advising him that the behavior he was engaged in during the incident could be interpreted as stalking. Mr. Martinez allegedly was lingering in a hair salon in Bellevue and appeared to just be watching the female stylists. Mr. Martinez denied being involv[ed] in any suspicious activity.
4. In Brown County Sheriff's Office case #19-021061, on or about June 7, 2019, Deputy Carly Resch cited Mr. Martinez for following a forty[-]year[-]old woman and her son around for two days in 2019. The victim reported she first saw Mr. Martinez at the Bellevue Target and then at her children's hair salon. Both times, Mr. Martinez was staring at her and never got out of his car. Deputy Resch observed via Target surveillance video a vehicle matching Mr. Martinez's vehicle pulling into the [parking lot after the] victim's

² The State explains that the Kroc Center is "a multiuse community center that includes facilities for fitness, education, and performing arts."

vehicle and following her a couple of seconds after she leaves the parking lot. Mr. Martinez denied following anyone and said he did not have an explanation for the evidence Deputy Resch observed.

5. In Brown County case 19CM1555, Mr. Martinez was convicted of Lewd and Lascivious behavior and Disorderly Conduct for an incident outside a Pure Barre class in 2019. One female observed Mr. Martinez touching his genitals, and a few days before another female reported the male had his hands down his pants in a silver sedan and appeared to be making a motion as if he was touching himself. Video surveillance showed Mr. Martinez pacing around the business for about 5 minutes before walking up to the window and staying there for about 2-3 minutes. Mr. Martinez admitted to being at the Pure Barre class on at least two separate occasions and he was there “just waiting.” Mr. Martinez acknowledged walking up to the window and looking inside before returning to his car to “hang out.”

¶7 At trial, the State’s first witness was an individual who called police on November 2, 2020, about a “suspicious vehicle” parked across the street from his home. The man testified that the vehicle—a silver Saab—was parked there “for an extended period of time, maybe 15, 20 minutes,” and that the driver remained in the vehicle, which was unusual in that neighborhood. The man further testified that the driver had a cell phone in front of his face, and “then there was a lady that jogged by, and I noticed that he had followed her or tracked her with his cell phone, and that’s what kind of got my suspicion.” The man noted the vehicle’s make, model, color, and license plate number, and he provided that information to law enforcement. A law enforcement officer testified that Martinez was the registered owner of the vehicle in question.

¶8 The State also called each of the four victims to testify at trial.³ Mary, an adult woman, testified that she lived on a dead-end cul-de-sac in a quiet neighborhood. On November 2, 2020, she was leaving her house to take her dog for a walk when she saw a vehicle that she did not recognize—a silver Saab—on her street. She “didn’t think anything of it,” but later on during her walk, the same vehicle drove up slowly behind her while she was walking in another cul-de-sac and then stopped and parked. Mary “thought it was odd because he clearly just drove down my street, must have turned around in the cul-de-sac, then turned left and went to drive down the other cul-de-sac” where she was walking.

¶9 Mary proceeded onto a trail through a wooded area that connected the cul-de-sac where she was walking to another street. When she got to the end of the trail, she decided to turn around and go home. As she started back, she saw a man walking toward her quickly and “pretending to be talking on his cell phone.” When he got close to her, he slowed down, stopped, and said in a “nervous, fast way, hi, hi, how are you.” Mary “just kept walking.” She testified that the man’s behavior made her feel “nervous” because she “didn’t understand what was going on” and “didn’t know if something bad was going to happen.”

¶10 When Mary left the trail, she proceeded onto a “busy street” that “take[s] you in and out of the neighborhood” because she “felt a little more comfortable being out where there were a lot of homes and people around.” About 5 to 10 minutes later, the silver Saab came up behind her, passed her, stopped at a stop sign for about 30 seconds, and then took a left turn to go “further

³ Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use pseudonyms when referring to the victims in this case.

into the neighborhood,” rather than taking a right turn, which would have taken the vehicle out of the neighborhood. Mary testified that she did not call law enforcement about this incident right away, but she did so later after seeing a number of messages in a neighborhood group complaining about the silver Saab. Mary further testified that she had become more concerned about the incident with the silver Saab over time “because of all the what-ifs” and that the incident made her feel harassed, threatened, terrified, and intimidated.

¶11 Joanna, one of the teen victims, testified that on November 2, 2020, she and her friend Erin, another teenager, were taking a walk in her neighborhood when they saw a man sitting in a silver or white car at a stop sign. The man waved to them, Joanna waved back, and the girls kept walking. The man then followed the girls down a cul-de-sac, drove up to them, rolled down his window, and started talking to them. Joanna testified that they “didn’t really say anything,” and the man drove away. The girls kept walking, but they did not go back to Joanna’s house because they were concerned that the man was following them, and they did not want him to know where Joanna lived. Joanna testified that Erin “was really nervous” and told Joanna that she had seen the same car earlier. On cross-examination, Joanna testified that she was not “scared” by the man’s conduct, but the second time she saw him she was “a little uncomfortable.”

¶12 Erin testified that one day in November 2020, she rode her bike from her home to Joanna’s house. On the way there, she saw a man in a silver car that she did not recognize pulled over in a “weird spot” where “nobody really stops.” The man got out of his car and appeared to be “checking out his trunk.” There was another girl walking past the car, and Erin felt “nervous for the other girl.”

¶13 After she arrived at Joanna’s house, Erin told Joanna that she had seen “this kind of creepy guy” who was doing “some suspicious things.” She and Joanna decided to go for a walk, and while they were walking, the same car passed them. Erin testified that she was “getting really nervous” because she believed the car was following her, but Joanna “just kind of brushed it past.” They kept walking, and when they were in another cul-de-sac, the car came up behind them again, and Erin “felt really nervous” because there was no one outside, so “if we were going to be in trouble, nobody could help us.” The man rolled down his window and started talking to them, saying, “[H]ey, did you ... wave to me up there?” Erin testified that she and Joanna “didn’t really know what to do” and “kind of just ignored it.” The man’s behavior made Erin feel “really nervous.” She testified that since the incident, she rarely walks alone, and if she does, she brings a rape alarm with her.

¶14 The third teen victim, Eliza, testified that in November 2020, she was walking her dog in her neighborhood when she saw a vehicle parked by a wooded area where “no cars ever park ... because there’s no need.” There was a person outside the car “just like walking around, and it looked like they had ... no business doing anything there,” so Eliza thought they might be having car trouble. Eliza felt uncomfortable because she did not know who the person was and because she was “in an area that [had] no houses with people,” so she called her sister and remained on the phone with her. After Eliza passed the car, it went into a dead-end cul-de-sac, turned around, and then circled back toward her. The car then drove past Eliza at a higher-than-normal rate of speed. Eliza testified that this incident made her feel “very unsafe” and that afterward she slept with her mom for a few weeks.

¶15 The State presented evidence regarding location data extracted from Martinez’s cell phone, which showed that his phone was in the area where these incidents occurred on November 2, 2020. In addition, a law enforcement officer testified that he interviewed Martinez, who admitted to being present in that area on the day in question. The officer testified that Martinez gave “many different answers” about what he was doing in that area, which “ranged from searching for parks and places to work out to looking at farms that were for sale and just drinking energy drinks.” At the end of the State’s case, the prosecutor read the stipulated facts regarding the other-acts evidence to the jury.

¶16 Martinez subsequently testified in his own defense. He stated that he was driving in the victims’ neighborhood in November 2020 because he was looking at farms or horse ranches. While driving, he “would probably make some stops just to get some rest maybe” or “drink[] energy drinks.” He testified that he was “not bothering anybody” and “probably” stopped to get a better view of a farm that he was “checking out” because it was his dream to own his own farm someday. He denied following anyone but testified that he says “hi” to everyone he passes. He asserted that he was not causing any trouble and was not trying to threaten, harass, intimidate, or cause emotional harm to anyone.

¶17 The jury found Martinez not guilty of the stalking charges pertaining to Eliza and Joanna, but guilty of the charges pertaining to Mary and Erin. Martinez now appeals, arguing that the circuit court erred by admitting the other-acts evidence about him being cited for masturbating at the Kroc Center and

being convicted of lewd and lascivious behavior and disorderly conduct for masturbating outside of a Pure Barre class.⁴

DISCUSSION

¶18 Under WIS. STAT. § 904.04(2)(a), “evidence 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.” However, such evidence may be admitted “when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Sec. 904.04(2)(a).

¶19 To determine the admissibility of other-acts evidence, we apply the three-prong test set forth in *Sullivan. State v. Martinez*, 2011 WI 12, ¶19, 331 Wis. 2d 568, 797 N.W.2d 399. Under that test, other-acts evidence is admissible if: (1) it is offered for a permissible purpose under WIS. STAT. § 904.04(2)(a); (2) it is relevant under the two relevance requirements in WIS. STAT. § 904.01; and (3) its probative value is not substantially outweighed by the danger of unfair prejudice under WIS. STAT. § 904.03. *Martinez*, 331 Wis. 2d 568, ¶19. “The party seeking to admit the other-acts evidence bears the burden of establishing that the first two prongs are met by a preponderance of the evidence.” *Id.* If the first two prongs are satisfied, “the burden shifts to the party opposing the admission of the other-acts evidence to show that the probative value of the evidence is substantially outweighed by the risk or danger of unfair prejudice.” *Id.*

⁴ Martinez does not argue that the circuit court erred by admitting the remaining other-acts evidence, which pertained to Martinez following two women and watching female stylists at a hair salon.

¶20 “We review a circuit court’s admission of other-acts evidence for an erroneous exercise of discretion.” *Id.*, ¶17. We will affirm the court’s exercise of discretion if the court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *Id.*

I. Permissible purpose

¶21 Under the first prong of the *Sullivan* analysis, “[i]dentifying a proper purpose for other-acts evidence is not difficult and is largely meant to develop the framework for the relevancy examination.” *State v. Hurley*, 2015 WI 35, ¶62, 361 Wis. 2d 529, 861 N.W.2d 174. “The proponent need only identify a relevant proposition that does not depend upon the forbidden inference of character as circumstantial evidence of conduct.” *Id.* (citation omitted). “As long as one permissible purpose for the other-acts evidence exists, the first prong of the *Sullivan* analysis is met.” *Id.*

¶22 In this case, the State identified three permissible purposes for admitting its proffered other-acts evidence: intent, knowledge, and motive. Each of those purposes is expressly listed as a permissible purpose in WIS. STAT. § 904.04(2)(a). As such, the circuit court did not erroneously exercise its discretion by concluding that the State had satisfied its burden under the first prong of the *Sullivan* analysis. While Martinez argues that the State was required to do more, his argument is contrary to binding precedent holding that the mere identification of a permissible purpose satisfies the first *Sullivan* prong. See *Hurley*, 361 Wis. 2d 529, ¶62; *State v. Dorsey*, 2018 WI 10, ¶42, 379 Wis. 2d 386, 906 N.W.2d 158; *State v. Seaton*, 2024 WI App 68, ¶¶17-18, 414 Wis. 2d 415, 16

N.W.3d 20, *review denied*, 2025 WI 16, 23 N.W.3d 189. We therefore proceed to the second step of the *Sullivan* analysis.

II. Relevance

¶23 Under *Sullivan*’s second prong, other-acts evidence is relevant when it “relates to a fact or proposition that is of consequence to the determination of the action” and “has a tendency to make a consequential fact more probable or less probable than it would be without the evidence.” *Sullivan*, 216 Wis. 2d at 785-86. We agree with the State that the circuit court did not erroneously exercise its discretion by concluding that the other-acts evidence regarding Martinez’s public masturbation was relevant.⁵

¶24 As to the first aspect of relevance, the other-acts evidence related to multiple facts or propositions that were of consequence to the determination of the action—namely, Martinez’s intent, motive, and knowledge. “[A]s elements of the crime, intent and motive are always facts or propositions of consequence.” *State v. Veach*, 2002 WI 110, ¶78, 255 Wis. 2d 390, 648 N.W.2d 447. In this case, to convict Martinez of each stalking charge, the State was required to prove that Martinez “*intentionally engaged in a course of conduct directed at*” the designated victim. See WIS JI—CRIMINAL 1284 (emphasis added). In other words, the State needed to prove that Martinez “*acted with the purpose to engage in a course of conduct directed at*” each victim. See *id.* (emphasis added; footnote omitted); see

⁵ Martinez suggests that the circuit court did not adequately explain the basis for its conclusion that the other-acts evidence was relevant. However, “[e]ven if a circuit court fails to set forth the basis for its ruling, we will nonetheless independently ‘review the record to determine whether it provides an appropriate basis for the circuit court’s decision.’” *State v. Martinez*, 2011 WI 12, ¶17, 331 Wis. 2d 568, 797 N.W.2d 399 (citation omitted).

also *State v. Hammer*, 2000 WI 92, ¶27, 236 Wis. 2d 686, 613 N.W.2d 629 (stating that “motive is relevant to purpose”). In addition, the State needed to prove that Martinez “knew or should have known” that at least one of the acts constituting his course of conduct directed at each victim would cause that victim to suffer serious emotional distress. See WIS JI—CRIMINAL 1284.

¶25 We agree with the State that the other-acts evidence in this case—including the evidence pertaining to the two instances of public masturbation—demonstrated that Martinez had a recent history of accumulating warnings, citations, and convictions for publicly harassing women. The evidence was therefore relevant to show that when Martinez performed the acts constituting the course of conduct alleged in this case, he did so with the intent to engage in a course of conduct directed at the four victims. The other-acts evidence regarding the public masturbation also suggested a possible motive for Martinez’s actions in this case—i.e., sexual gratification. Accordingly, we agree with the State that “the evidence that Martinez masturbated in public—once in a community fitness center and another time near a barre studio in view of its female clients—addressed a potential defense or questions asking why Martinez would repeatedly harass and intimidate women.”

¶26 Moreover, the other-acts evidence was relevant to prove Martinez’s knowledge—i.e., that Martinez knew or should have known that at least one of his acts would cause each victim serious emotional distress. See *id.* All five of the other acts proffered by the State resulted in the police making contact with Martinez and issuing either verbal warnings, written warnings, citations, or criminal charges. Accordingly, the other-acts evidence tended to show that Martinez knew, or should have known, that his actions during the prior incidents were sufficiently disturbing to the individuals involved as to prompt those

individuals to contact law enforcement. That fact would support an inference that Martinez knew, or should have known, that his acts of watching and following the victims in this case would be similarly disturbing to the victims, such that they would suffer serious emotional distress as a result of his conduct.

¶27 Martinez argues that the other-acts evidence regarding the two instances of public masturbation “does not provide a reason for ... Martinez to sit in the neighborhood and drive past or talk to women and girls he encountered,” nor do the masturbation incidents “show knowledge of the elements of stalking—particularly the intent element.” We agree with the State, however, that the evidence of Martinez’s “masturbation in public places, particularly in fitness centers and around women” supports reasonable inferences “that Martinez intended to harass, disturb, and intimidate the victims” in this case, “that he was motivated by sexual gratification,” and that “he knew his conduct would cause serious emotional distress, given the number of his past warnings, citations, and convictions for doing similar things in the two or so years preceding his conduct in this case.”

¶28 The second aspect of *Sullivan*’s relevance prong focuses on the probative value of the other-acts evidence. See *Hurley*, 361 Wis. 2d 529, ¶79. “The measure of probative value in assessing relevance is the similarity between the charged offense and the other act”—specifically, similarity with respect to “time, place, and circumstance.” *Id.* (citations omitted). “The greater the similarity, complexity and distinctiveness of the events, the stronger is the case for admission of the other[-]acts evidence.” *Id.* (citation omitted). Nevertheless, “events that are dissimilar or that do not occur near in time may still be relevant to one another.” *Id.*, ¶80.

¶29 Additionally, as the State aptly notes, stalking is different from many other crimes, in that it requires the State to prove that the defendant engaged in a course of conduct. *See* WIS JI—CRIMINAL 1284. Accordingly, we agree with the State that “in the context of determining the probative value of proposed other-acts evidence in a stalking case, similarity can be demonstrated not just by comparing individual other acts to the isolated acts of conduct within the charged course, but also by how collective other acts reflect a similar pattern of conduct.”

¶30 Here, the circuit court could reasonably conclude that the other-acts evidence—including the evidence regarding the two public masturbation incidents—was sufficiently similar to the charged stalking offenses to have probative value as to Martinez’s intent, motive, and knowledge. In this case, Martinez was accused of placing himself in a neighborhood where he had no legitimate reason to be and repeatedly watching, following, and approaching a woman and three teen girls. The other act at the Kroc Center involved Martinez placing himself at a fitness center where he had no legitimate reason to be and publicly masturbating. The other act at the barre studio involved Martinez placing himself outside the studio, where he again had no legitimate reason to be, on at least two separate occasions, looking through the window, and masturbating in view of the studio’s female patrons.

¶31 When considered in conjunction with the additional other-acts evidence proffered by the State, the jury could reasonably view the two instances of public masturbation as being part of a larger course of conduct by Martinez that involved conduct intended to harass and intimidate women. Based on that prior course of conduct, the jury could infer that Martinez intended to engage in a similar course of conduct directed at the female victims in this case, that his

motivation in doing so was sexual gratification, and that he knew or should have known that his actions would cause the victims serious emotional distress.

¶32 Martinez emphasizes that he was not charged with stalking in connection with the two public masturbation incidents. However, the mere fact that those incidents did not give rise to stalking charges does not make them so dissimilar from Martinez’s actions in the present case that they are completely lacking in probative value as to Martinez’s intent, motive, and knowledge. As noted above, stalking requires the State to prove that the defendant engaged in a course of conduct. The masturbation incidents may have been insufficient to show that Martinez engaged in a course of conduct with respect to any specific victim, such that there was no basis for the State to issue stalking charges with respect to those incidents. Nevertheless, when viewed in the context of the other warnings and citations that Martinez received in the two years preceding the charges in this case, the public masturbation incidents reflect a pattern of conduct that is similar to Martinez’s conduct underlying the current charges. The public masturbation incidents were therefore probative of Martinez’s intent, motive, and knowledge with respect to the stalking charges in this case.

¶33 Martinez also argues that the State’s intent in introducing the public masturbation incidents was to “impermissibly suggest that ... Martinez was stalking the alleged victims in this case in order to masturbate to them in public.” Martinez asserts that the evidence could not be introduced for that purpose because the stalking charges did not require proof that he engaged in the alleged conduct for the purpose of sexual gratification. As previously explained, however, motive is relevant to purpose. See **Hammer**, 236 Wis. 2d 686, ¶27. Here, the State needed to prove that Martinez “acted with the purpose to engage in a course of conduct directed at” each victim. See WIS JI—CRIMINAL 1284 (footnote

omitted). Thus, evidence suggesting a sexual motivation for Martinez’s conduct was relevant to rebut his defense that his presence in the victims’ neighborhood was completely innocent and that he did not engage in a course of conduct directed at any of the victims.

¶34 For these reasons, we reject Martinez’s argument that the circuit court erroneously exercised its discretion by concluding that the public masturbation incidents were relevant under the second prong of the *Sullivan* test.

III. Danger of unfair prejudice

¶35 Under the third prong of the *Sullivan* analysis, the circuit court determined that Martinez had failed to meet his burden to show that the probative value of the other-acts evidence was substantially outweighed by the danger of unfair prejudice. See *Marinez*, 331 Wis. 2d 568, ¶41. We conclude that the court did not erroneously exercise its discretion in that regard.

¶36 A court may exclude otherwise admissible other-acts evidence under *Sullivan*’s third prong “only if the evidence’s probative value is *substantially outweighed* by the danger of unfair prejudice.” *Marinez*, 331 Wis. 2d 568, ¶41. Consequently, “[t]he bias ... is squarely on the side of admissibility,” and “[c]lose cases should be resolved in favor of admission.” *Id.* (first alteration in original; citation omitted). Moreover, because nearly all evidence is prejudicial to the party against whom it is offered, *State v. Murphy*, 188 Wis. 2d 508, 521, 524 N.W.2d 924 (Ct. App. 1994), unfair prejudice “is not based on simple harm to the opposing party’s case, but rather ‘whether the evidence tends to influence the outcome of the case by improper means,’” *Hurley*, 361 Wis. 2d 529, ¶87 (citation omitted). For instance, unfair prejudice occurs “when the proffered evidence ... appeals to the jury’s sympathies, arouses its sense of horror, provokes

its instinct to punish or otherwise causes a jury to base its decision on something other than the established propositions in the case.” *Id.*, ¶88 (citation omitted).

¶37 Martinez argues that the other-acts evidence regarding the public masturbation incidents was unfairly prejudicial because it “added a level of inappropriateness not otherwise present in the allegations of this case.” More specifically, Martinez asserts that “[h]earing about a sexual aspect, like masturbation, would arouse a jury’s sense of horror” and “cause a jury to want to punish” him. We do not find this argument persuasive, for three reasons.

¶38 First, in support of the stalking charges in this case, the State presented evidence that Martinez had directed unwanted attention toward teen girls and an adult woman in ways that those individuals found frightening and intimidating. We agree with the State that “a jury—already hearing that Martinez had engaged in a pattern of following the victims in this case and making them feel unsafe—would [not] feel so horrified about the masturbation that it would feel compelled to punish Martinez” based on that conduct.

¶39 Second, we note that the other-acts evidence was limited to the stipulated facts presented to the jury. No testimony regarding the masturbation incidents was introduced, and the incidents were not described to the jury in detail. As such, the manner in which the other-acts evidence was presented to the jury limited its prejudicial effect.

¶40 Third, we observe that the jury acquitted Martinez of two of the four stalking charges, which strongly suggests that the masturbation evidence did not arouse the jury’s sense of horror or provoke its instinct to punish Martinez to such an extent that the jury was unable to properly assess whether the State’s evidence was sufficient to establish Martinez’s guilt beyond a reasonable doubt. As the

State aptly notes, “Had the masturbation evidence been so unfairly prejudicial as to provoke this jury’s ‘instinct to punish,’ it is hard to explain why [the jury] avoided succumbing to that alleged instinct and instead acquitted Martinez on two of the four charges.” (Citation omitted.)

CONCLUSION

¶41 For the foregoing reasons, we conclude that the circuit court did not erroneously exercise its discretion by granting the State’s motion to admit the other-acts evidence regarding the public masturbation incidents. We therefore affirm Martinez’s judgment of conviction.⁶

By the Court.—Judgment affirmed.

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

⁶ Because we conclude that the circuit court did not err by admitting the other-acts evidence regarding the public masturbation incidents, we need not address the State’s alternative argument that any error in admitting that evidence was harmless. See *Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (explaining that this court need not address all issues raised by the parties if one is dispositive).

