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DISTRICT I

September 29, 2026

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Circuit Court Judge
Electronic Notice

Esther Cohen Lee
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Clerk of Circuit Court
Milwaukee County Safety Building
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You are hereby notified that the Court has entered the following opinion and order:

2025AP591-CR

State of Wisconsin v. Julius Stewart (L.C. # 2023CF4035)

Before Donald, C.J., Colón, P.J., and Geenen, J.

Summary disposition orders 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).

Julius Stewart appeals from a judgment, following a jury trial, convicting him of second-degree intentional homicide with use of a dangerous weapon. He also appeals the order denying his postconviction motion.¹ Based upon our review of the briefs and record, we conclude at

¹ The Honorable Ellen R. Brostrom presided over Stewart's jury trial and sentencing in this matter and entered the judgment of conviction. We refer to Judge Brostrom as the trial court. The Honorable Laura Crivello issued the order denying Stewart's postconviction motion. We refer to Judge Crivello as the postconviction court.

conference that this case is appropriate for summary disposition and affirm. See WIS. STAT. RULE 809.21 (2023-24).²

According to the complaint, Stewart shot and killed his cousin, Orlando Jones, in August of 2023. There were numerous eyewitnesses to the incident, and it was captured on surveillance footage. The State charged Stewart with first-degree intentional homicide with use of a dangerous weapon.

Pretrial, Stewart filed a motion to admit “other acts/**McMorris** evidence.”³ The proffered evidence included evidence that Jones was in a gang, was known to carry a firearm, sold drugs, got into a fight two months before he was killed, and was arrested in 2019 for possession of marijuana with intent to sell and in 2018 for carrying a concealed weapon. According to Stewart, all of this evidence would help him to prove he acted in self-defense. Additionally, Stewart argued that the evidence would corroborate his testimony about Jones’s reputation for carrying a concealed weapon.

After listening to the parties’ arguments, the trial court allowed evidence of Jones’s reputation for carrying a weapon and about the fight that Stewart witnessed. The court excluded evidence referencing “gang” activity, but it told Stewart he could testify about Jones’s

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

³ Evidence of a victim’s violent character and past violent acts is often referred to as **McMorris** evidence. See **McMorris v. State**, 58 Wis. 2d 144, 152, 205 N.W.2d 559 (1973) (discussing that when a defendant has a factual basis to support a claim of self defense “the defendant may, in support of the defense, establish what the defendant believed to be the turbulent and violent character of the victim by proving prior specific instances of violence within his [or her] knowledge at the time of the incident”).

“organization” and that Jones had pressured him to join the organization. The court additionally excluded evidence of the prior arrests.

Stewart pursued a self-defense claim at trial. He testified that he was armed with a firearm the day he shot Jones. Stewart said that he had had severe health problems and testified to having had open heart surgery a few years before this incident. Stewart said he could not physically defend himself if something happened. He also testified that he knew that the neighborhood where the incident occurred could be dangerous.

Stewart testified that Jones was his cousin and that the two were close until a couple of years before this incident. Stewart knew Jones had a reputation for violence, and he knew that Jones carried a firearm. He said that Jones had been upset with him because he would not join his organization. He described Jones as being a bully and testified to seeing Jones beat up an old man during a separate incident.

Stewart testified that at 6:27 p.m. on the day of the incident, as could be seen in surveillance footage, Jones physically assaulted him. According to Stewart, multiple times during the altercation Jones reached for the firearm that Jones was carrying on his waist. Stewart testified that at that point, he feared for his life because he “knew [Jones] was going to shoot [him] for a fact.” Stewart testified that he proceeded to shoot Jones because he believed that if he had not done so, Jones would have shot him. Stewart testified that he fired at Jones five times. Jones died from multiple gunshot wounds.

The trial court gave the self-defense instruction to the jury and also instructed the jury as to the lesser-included offense of second-degree intentional homicide. The jury convicted Stewart

of second-degree intentional homicide with use of a dangerous weapon. The court sentenced Stewart to thirty years of initial confinement and fifteen years of extended supervision.

Postconviction, Stewart filed a motion alleging that the trial court erroneously exercised its discretion when it excluded evidence of Jones's gang affiliation and prior arrests. Stewart also sought sentence modification, arguing that the trial court's sentence was unduly harsh or unconscionable and constituted an erroneous exercise of discretion. The postconviction court rejected both claims.

On appeal, Stewart renews his two postconviction claims.

I. The trial court properly denied Stewart's request to admit evidence of Jones's prior arrests and involvement in gang activity at trial.

We first address Stewart's argument that the trial court erred when it disallowed some of his proffered other-acts evidence. Stewart challenges the trial court's denial of his request to introduce evidence of Jones's arrests for carrying a concealed weapon and for possessing marijuana with intent to sell and of Jones's involvement in gang activity.

Stewart claims that the most important evidence in this case was that he knew Jones always carried a gun and, based on Jones's actions during the confrontation, he reasonably believed that Jones intended to use it in that moment against him. See *State v. Head*, 2002 WI 99, ¶67, 255 Wis. 2d 194, 648 N.W.2d 413 (explaining that "if a person reasonably believed that [he or] she was preventing or terminating an unlawful interference with [his or] her person and reasonably believed that the force used was necessary to prevent imminent death or great bodily harm, [he or] she is not guilty of either first- or second-degree intentional homicide"). Stewart submits that the fact that Jones was arrested for carrying a concealed weapon years before the

underlying incident corroborated Stewart’s beliefs. Likewise, according to Stewart, the fact that Jones was involved in gang activity and had been arrested for possession of marijuana with intent to sell further corroborated that fact that he was known to carry a gun, since drug dealers are well known to carry guns.

“[T]he decision to admit other-acts evidence is reviewed for an erroneous exercise of discretion.” *State v. Lock*, 2012 WI App 99, ¶43, 344 Wis. 2d 166, 823 N.W.2d 378. “A trial court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law, and uses a demonstrably rational process to reach a conclusion that a reasonable judge could reach.” *Id.* (citation modified). “We generally look for reasons to sustain the trial court’s discretionary decisions.” *Id.*

In addressing the trial court’s decision to admit other-acts evidence, we follow the three-prong test from *State v. Sullivan*, 216 Wis. 2d 768, 576 N.W.2d 30 (1998). First, we ask whether the evidence is “offered for an acceptable purpose under WIS. STAT. § [] 904.04(2), such as establishing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident[.]” *Sullivan*, 216 Wis. 2d at 772. Second, we ask whether the evidence is relevant. *Id.* Finally, we consider whether “the probative value of the other acts evidence [is] substantially outweighed by the danger 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[.]” *Id.* at 772-73.

Applying the *Sullivan* test, we conclude that the trial court properly excluded the evidence of Jones’s prior arrests and involvement in gang activity. The court heard Stewart’s argument in favor of admitting the evidence to show Stewart’s state of mind at the time of the

incident. With regard to testimony that Jones was in a gang and the activities that the gang engaged in, the State objected on grounds that the probative value of the evidence was outweighed by the prejudicial effect and that the evidence would not explain why such activity made Stewart afraid at the time of the shooting. The court agreed, noting that the word “gang” raised the potential for unfair prejudice and said that it would not be fair to the State to suggest that Jones was a gang member without further corroboration. Ultimately, the trial court allowed Stewart to introduce testimony that Jones was in an organization that Stewart did not want to join because Stewart did not think the organization was doing good things in the community.

The trial court additionally excluded evidence that Jones had prior arrests for carrying a firearm and possessing marijuana, noting “there’s some attenuation in time as to relevance, and also that Mr. Stewart was not present for either [arrest], and there’s no information that [the arrests] involved, you know, violence by [Jones].”⁴ In terms of the carrying a concealed weapon

⁴ Stewart argues that the case law does not require that Stewart had to personally have knowledge of the arrests. As support, he relies on *McCallister v. State*, 74 Wis. 2d 246, 246 N.W.2d 511 (1976), where our supreme court explained that

[a] defendant should not be limited merely to his [or her] own assertion that he [or she] had knowledge of particular violent acts, but should be allowed to produce supporting evidence to prove the reality of the particular acts of which he [or she] claims knowledge, thereby proving reasonableness of his [or her] knowledge and apprehension and the credibility of his [or her] assertion.

Id. at 250-51.

Stewart’s reliance is misplaced in that the *McCallister* court ultimately concluded that the defendant in that case had no knowledge of the contents of the hospital records sought to be introduced. *Id.* at 251. Thus, the court concluded that the defendant’s “state of mind could not have been affected by them,” and the trial court properly exercised its discretion in excluding the evidence. *Id.*

A similar conclusion was reached here. Moreover, this was only one of a number of factors articulated by the trial court when it exercised its discretion.

arrest, the court concluded that did not necessarily equate with violence, stating “we’ve got lots of people in this city that are really just carrying illegally because they haven’t gone through the ... process, not to commit violence, but for self-defense.” The court also relayed that the State had argued “there’s serious doubt about [Jones]’s connection to the THC that was found, he was never charged, now he’s dead, so he can’t say.” From there, the court concluded that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

Like the postconviction court, we conclude that the trial court properly exercised its discretion when it denied Stewart’s request to introduce evidence of Jones’s previous arrests and his involvement in gang activity. This was a reasonable application of the law to the facts. See *Martindale v. Ripp*, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698 (We will “uphold a decision to ... exclude evidence if the [trial] court examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion.”).

II. The trial court properly exercised its sentencing discretion.

Next, Stewart renews the argument that his sentence amounted to a probable life sentence, given that he was thirty-nine years old at the time of sentencing. He claims that the sentence was unduly harsh or unconscionable and constituted an erroneous exercise of the trial court’s sentencing discretion.

Our review of a sentence is limited to whether the trial court erroneously exercised its discretion. *State v. Harris*, 2010 WI 79, ¶3, 326 Wis. 2d 685, 786 N.W.2d 409. “When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the trial court in passing sentence[.]” *State v. Stenzel*, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20. A sentence is unduly harsh or

unconscionable “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Id.*, ¶21 (citation omitted).

The primary factors the trial court must consider when exercising its sentencing discretion are “the gravity of the offense, the character of the [offender], and the need to protect the public.” *Harris*, 326 Wis. 2d 685, ¶28. The court may consider a variety of other factors as well, including the defendant’s criminal history, his or her personality and social traits, the aggravated nature of the crime, the defendant’s culpability, his or her age and education, his or her remorse or lack thereof, his or her cooperation, his or her need for close rehabilitative control, and the rights of the public. *Id.*

Stewart faced a maximum possible sentence of sixty-five years, consisting of forty-five years of initial confinement and twenty years of extended supervision. Ultimately, the trial court followed the State’s recommended sentence of thirty years of initial confinement and fifteen years of extended supervision. In doing so, the court addressed the primary factors and explained that its sentencing goals were punishment and deterrence.

Stewart’s argument largely consists of taking the trial court to task for not doing more to explain why it would take thirty years in prison to rehabilitate him. Stewart claims the court merely gave “lip service to the goal of rehabilitation” by stating: “In terms of rehabilitative services, I don’t think there’s a lot of them. I do think you should get a mental health evaluation and any treatment that would be warranted.” Stewart additionally argues that it did not appear—to Stewart—that the trial court had adequately taken his age or his very serious and on-going health issues into account when it sentenced him.

The crux of Stewart’s argument is that the trial court did not weigh the sentencing factors as he would have hoped. That, however, is not an erroneous exercise of discretion. See ***State v. Prineas***, 2009 WI App 28, ¶34, 316 Wis. 2d 414, 766 N.W.2d 206 (explaining that our inquiry is whether the trial court exercised discretion, not whether discretion might be exercised differently).

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals