

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 20, 1998

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. 97-1371-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WALLACE P. GREENDEER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Wallace Greendeer appeals from a judgment convicting him on two counts of second-degree sexual assault of a child, two counts of intimidating a victim by threatening force, and one count of exposing his genitals to a child. The issues are whether the trial court properly excluded evidence of the previous sexual activities of one of his victims, and evidence that

the same child was held in custody to insure his appearance at trial. We affirm the trial court's rulings on these issues.

C.B. and J.H., both fourteen, alleged that Greendeer assaulted them when they spent the night sleeping in the same room with him. Before trial, Greendeer sought to introduce evidence that C.B. had committed several sexual assaults on other children in ways similar to what C.B. alleged Greendeer did to him. The trial court excluded the evidence under the rape shield law, § 972.11(2), STATS. Greendeer also moved, unsuccessfully, to introduce evidence that C.B. was held in custody to insure his appearance at the trial. This appeal results from the jury's guilty verdicts on the charges against Greendeer.

Section 972.11(2), STATS., excludes all evidence of a complaining witness's prior sexual conduct, except in circumstances not relevant here. However, the Sixth Amendment to the United States Constitution bars application of that section in cases where the defendant shows that (1) the prior acts clearly occurred; (2) the acts closely resembled those of the present case; (3) the prior act is clearly relevant to a material issue; (4) the evidence is necessary to the defendant's case; and (5) the probative value of the evidence outweighs its prejudicial effect. *State v. Pulizzano*, 155 Wis.2d 633, 656, 456 N.W.2d 325, 335 (1990). Additionally, even if the defendant makes the necessary showing, the trial court must determine whether the State's interest in excluding the evidence is so compelling that it nevertheless overcomes the defendant's right to present it. *Id.* at 656-57, 456 N.W.2d at 335. The exception to the rape shield law created by *Pulizzano* exists for the limited purpose of proving an alternative source for sexual knowledge. *Id.* at 656, 456 N.W.2d at 335. The *Pulizzano* analysis is left to the trial court's discretion. *Id.* at 657, 456 N.W.2d at 335.

The trial court properly excluded the proffered evidence concerning C.B.'s sexual history. The trial court reasonably concluded that evidence of his prior sexual conduct was not necessary to show an alternative source for C.B.'s sexual knowledge, given the fact that he was fourteen when he accused Greendeer, and one could readily infer a fourteen-year-old's sexual knowledge from any number of alternative sources. The court also reasonably concluded that the probative value of the evidence was minimal, and far outweighed by its unfair prejudice. The record fully supports the latter conclusion because C.B.'s alleged acts did not closely resemble Greendeer's, and the evidence of them was not clearly relevant nor particularly necessary to Greendeer's case. His theory of defense was that both boys falsely accused him, and he was able to introduce substantial evidence identifying their motives and questioning their credibility.

The trial court properly excluded evidence of C.B.'s confinement. Greendeer wanted to use the evidence to attack C.B.'s credibility as an unwilling or coerced witness. However, C.B.'s confinement carried no inference of unwillingness or coercion and therefore had no relevance to his credibility. It came about not because C.B. was unwilling to testify but because members of his family tried to prevent his testimony. Excluding evidence with no relevance to the purpose it was offered for is unmistakably within the trial court's discretion.

By the Court.—Judgment affirmed.

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

