

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 3, 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. 97-1416-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TERESA ROBELIA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Jackson County: ROBERT W. WING, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Teresa Robelia appeals from a judgment convicting her of recklessly causing great bodily harm as a person responsible for a child's welfare, and first-degree reckless homicide. She also appeals from an order denying her motion for postconviction relief. The issues are whether she

received effective assistance from trial counsel, and whether the trial court properly allowed certain other acts evidence. We affirm.

Chasity Robelia was born to Teresa in 1991. Early in 1992, the child was diagnosed as a severely injured victim of shaken baby syndrome. The child's presumed father, Tim Young, was the primary suspect in a police investigation conducted in concert with a CHIPS proceeding. The result of that proceeding was an order removing Chasity from Robelia's care until early in 1994.

On December 16, 1994, at around noon, emergency personnel discovered Chasity unconscious in Robelia's care. The child died soon after, as a result of being severely shaken and beaten. The State charged Robelia as the person allegedly responsible for Chasity's death.

At Robelia's trial there was conflicting evidence as to when the injuries could have been inflicted, with some evidence that they could have occurred forty-eight hours or more before Chasity died. That evidence was potentially helpful to Robelia because her principal defense consisted of blaming Young for Chasity's death, although he had no contact with the child after the morning of December 14. In order to build a case against Young, Robelia's attorney stipulated to admission of records from the CHIPS proceeding, although they also contained damaging information about Robelia and her relationship with Chasity. That information included psychological evaluations and other reports highly critical of Robelia's parenting skills and character.

One of Chasity's foster parents, Sharon Bluedorn also testified at trial to Robelia's anger, abruptness and carelessness with Chasity, and to an incident when Robelia slammed Chasity into a swing. Counsel did not object to Bluedorn's testimony, however, until she was asked about an incident when

Robelia left Chasity alone in the bathtub at Bluedorn's home. The court overruled the objection and Bluedorn testified to that incident as well.

The jury found Robelia guilty. Robelia filed a motion for postconviction relief alleging ineffective assistance of trial counsel. The trial court denied that motion, resulting in this appeal.

To prove ineffective assistance of trial counsel, the defendant must show that counsel's performance was deficient and that counsel's errors or omissions prejudiced the defense. *State v. Pitsch*, 124 Wis.2d 628, 633, 369 N.W.2d 711, 714 (1985). Deficient performance falls outside the range of professionally competent representation and is measured by the objective standard of what a reasonably prudent attorney would do in similar circumstances. *Id.* at 636-37, 369 N.W.2d at 716. Prejudice results when there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Id.* at 642, 369 N.W.2d 719. "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 637, 369 N.W.2d 716 (quoting *Strickland v. Washington*, 466 U.S. 668, 690 (1984)). Whether the defendant suffered prejudice is a question of law that we review without deference to the trial court's decision. *Id.* at 634, 369 N.W.2d 715.

Robelia first argues that counsel erred by stipulating to the admission of evidence concerning the 1992 CHIPS proceeding and Chasity's subsequent foster placement. Counsel testified that he stipulated to admitting this evidence for two primary reasons. First, it contained information suggesting that Young was responsible for Chasity's 1992 injuries. Second, the reports showed that Robelia substantially improved her parenting skills during 1994, after Chasity

was returned to her. Counsel further testified that, in his view, the benefits of allowing the information outweighed the cost. The trial court concluded that counsel's decision was a reasonable trial strategy, and so do we. The medical evidence tended to rule out an accidental death, and Young was the only other possible suspect. Robelia had little reasonable choice but to use all of the evidence she had pointing to Young as the perpetrator, even if some of that evidence damaged her as well. We will uphold a reasonable strategic decision even if, in hindsight, another strategy might have been more effective. *State v. Hubanks*, 173 Wis.2d 1, 28, 496 N.W.2d 96, 106 (Ct. App. 1992).

Robelia contends that counsel could have sought admission of the information on Young in the reports from the CHIPS proceeding, and simultaneously sought exclusion of the prejudicial information. However, in deciding the postconviction motion, the trial court stated that it would not have admitted the favorable evidence without also allowing the State to use the unfavorable evidence. That would have been a reasonable exercise of the trial court's discretion because the CHIPS evidence pertaining to Robelia was admissible under § 904.04(2), STATS., to put the evidence on Young in context, and to assist the State in showing that Chasity's death was not an accident.

Robelia next contends that counsel negligently failed to object to Bluedorn's testimony concerning Robelia's acts while Chasity was in foster placement. That evidence was also admissible under § 904.04, STATS., to show the absence of an accident, and counsel would not have succeeded had he objected to it. Additionally, Robelia cannot reasonably argue that it was unfairly prejudicial, because she was able to show that she had greatly improved her parenting skills after Bluedorn's contact with her. Robelia has therefore failed to show counsel's ineffectiveness or prejudice from his omission.

Finally, Robelia contends that the trial court erred by admitting Bluedorn's testimony about the bathtub incident, after counsel finally did object. Bluedorn described how Robelia left Chasity alone in the bathtub, and how her husband told Robelia that her conduct was inappropriate and endangered the child. That testimony was admissible to prove absence of mistake and knowledge of the consequences of reckless conduct toward a child. The trial court did not erroneously exercise its discretion by considering the testimony.

By the Court.—Judgment and order affirmed.

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

