COURT OF APPEALS
DECISION
DATED AND FILED

March 30, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0105-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

THAO LOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: STANLEY A. MILLER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Thao Lor appeals from a judgment entered after a jury convicted him of three counts of second-degree sexual assault of a child, three counts of child enticement, three counts of soliciting a child for prostitution, and one count of first-degree sexual assault, as a party to the crime. He argues that: (1) the trial court erroneously exercised discretion in allowing other acts evidence;

(2) the trial court erroneously instructed the jury on the soliciting a child for prostitution counts; (3) the evidence was insufficient to support his conviction on the counts of soliciting a child for prostitution; and (4) the evidence was insufficient to support his conviction for his second-degree sexual assault of Amber L.[1] We affirm.

BACKGROUND

The essential facts are somewhat complicated. During a three-week period in the spring of 1996, Lor and his accomplices lured three runaway girls into a prostitution ring in Wisconsin and Illinois. The charged counts stemmed from conduct in Milwaukee County; the other acts evidence pertained to similar conduct in Illinois. The case involved three victims,[2] Mang T., Amber L., and Tara T., and numerous male perpetrators, many of whom were Hmong and used nicknames. The case was further complicated by the fact that the crimes were committed in many different locations and by the fact that during much of the time, the girls were supplied with and encouraged to consume marijuana and alcohol. Consequently, the victims had some difficulty recalling the specific dates and locations of the incidents. Their difficulty was compounded by the fact that they were forced to prostitute themselves continuously from one day to another and were continuously transported to different locations, with little or no knowledge of the identities of their customers.

[1] We are very generous in stating that Lor "argues" these issues because appellate counsel's lengthy brief does little more than recite the evidence. We caution appellate counsel that appellate briefs must comply with RULE 809.19(1)(e), STATS., and include arguments in support of the issues raised.

[2] A fourth girl, Michelle W., was briefly involved in the incidents.

Despite these complications, trial testimony established that on or about March 26, 1996, Mang, Amber, and Tara ran away from a Sheboygan shelter, met Lor and, at his insistence, began engaging in prostitution. Lor drove the girls to clubs and taverns, where he would order them to wait in the car while he invited men to come outside and look at them. Lor would then transport the girls to various motels where the same men would be waiting. Lor then told the girls to have sex with the men. Mang testified that this scenario occurred several times over the three-week period, and included at least two trips to Illinois. She also testified that although she never received payment for the sex acts she performed, Lor did, having told her on more than one occasion that he made good money from the girls' work.

Mang and Tara also gave detailed testimony about the numerous sex acts in which they engaged at Lor's insistence. Mang also testified that when she refused to have sex with one man, Lue Thao, Lor held her down so that Lue Thao could have intercourse with her. Finally, Michelle testified about seeing Amber engaging in sex acts at Lor's command.

Evidence also established that Lor frequently threatened the girls to make them comply. Mang testified that Lor threatened to "ditch her on Highway 55" if she did not cooperate, and also threatened her with a gun telling her, "This is what I'll use on you if you don't do what I say."

ANALYSIS

Lor first argues that the trial court erred in admitting other acts evidence pertaining to the transporting of the three girls to Illinois for prostitution. We disagree.

We review a trial court's decision to admit other acts evidence by determining "whether the court exercised appropriate discretion." ***State v. Sullivan***, 216 Wis.2d 768, 780, 576 N.W.2d 30, 36 (1998). As Lor notes, in this case, the trial court stated no basis for its decision to admit the other acts evidence. If, however, "the trial court fails to set forth the reasoning behind its exercise of discretion, we need not reverse if an independent review of the record reveals a basis for sustaining the trial court's action." ***State v. Pittman***, 174 Wis.2d 255, 268, 496 N.W.2d 74, 80 (1993).

We determine the admissibility of other acts evidence under a three-step analysis. *See* ***Sullivan***, 216 Wis.2d at 771-72, 576 N.W.2d at 32-33. First, we consider whether the other acts evidence is offered for an acceptable purpose under § 904.04(2), STATS.[3] *See* ***id.*** at 772, 576 N.W.2d at 32. Second, we consider whether the other acts evidence is relevant under § 904.01, STATS.[4] *See* ***id.*** Third, we determine 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

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[3] Section 904.04(2), STATS., provides:

> **(2)** OTHER CRIMES, WRONGS, OR ACTS. 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. 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.

[4] Section 904.01, STATS., provides:

> **Definition of "relevant evidence".** "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

needless presentation of cumulative evidence. *See* ***id.*** at 772-73, 576 N.W.2d at 33; *see also* § 904.03, STATS.[5]

Other acts evidence is admissible under § 904.04(2), STATS., to establish motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The list of permissible purposes, however, is neither exclusive nor exhaustive. *See* ***State v. Kaster***, 148 Wis.2d 789, 797, 436 N.W.2d 891, 894 (Ct. App. 1989). Other acts evidence may also be admitted if necessary for a full presentation of the case. *See* ***State v. Shillcutt***, 116 Wis.2d 227, 236, 341 N.W.2d 716, 720 (Ct. App. 1983).

We conclude that the other acts evidence was necessary to provide the full presentation of the State's case. As noted, Lor's crimes were complicated, involving several victims, numerous men, different times and locations, and a variety of actions. As the prosecutor explained in her motion to introduce the other acts evidence, the Illinois conduct completed the larger picture of Lor's business—displaying the girls to potential customers and then taking them to various motels to "deliver the goods." In addition, the events in Illinois were relevant to the jury's assessment of the victims' credibility because, as the State argues, defense counsel "constantly implied that the girls put *and kept* themselves in Lor's environment, because they found it exciting." Thus, the evidence of Lor's intimidation of the victims in Illinois, including his thwarting of the girls' attempt

[5] Section 904.03, STATS., provides:

> **Exclusion of relevant evidence on ground of prejudice, confusion, or waste of time.** Although relevant, evidence may be excluded if its probative value 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.

to flee while at an Illinois truck stop, not only provided context to the crimes but also countered the defense attacks on the victims' credibility.

The Illinois evidence also was relevant to rebut defense counsel's unrelenting emphasis on the victims' failure to call police or walk away from Lor. Testimony regarding Lor's shuttling the girls from one state to another established his control over the victims. Testimony of Lor's keeping the girls high on marijuana and alcohol also provided an explanation for why their memories of dates and locations were imprecise. Accordingly, we conclude that the trial court properly admitted the other acts evidence.[6]

Lor next argues that no evidence supports the verdict on the charges of solicitation of a child for prostitution because the trial judge "misread" the jury instructions. Lor contends that the trial court erred by instructing that solicitation requires a finding that the defendant encouraged the girls to practice prostitution, which the judge read as "intentionally engaging in sexual intercourse or other sexual acts for money or on an ongoing basis." Noting that the second "or" should not have been in the instruction, Lor argues that "[t]he erroneous inclusion of the

[6] In addition, the evidence of the acts of prostitution in Illinois was admissible as substantive evidence on the charge of soliciting a child for prostitution. As the State explains:

> [V]irtually all of the acts of prostitution were admissible to prove the charges of soliciting a child for prostitution, section 948.08, Stats., because prostitution *by definition* involves *multiple* acts: "'To practice'" prostitution means intentionally engaging in sexual intercourse or other sexual acts for [money] *on an ongoing basis*." Wis. JI-Criminal 2136 (1997) (footnote omitted) (emphasis supplied). Similarly, "soliciting" a child for prostitution can be accomplished by "command[ing]" or "encourag[ing]" the child to engage in prostitution. ***Id.*** Thus, all of Lor's directive or intimidating treatment of the girls was relevant to the element of soliciting.

We agree.

word 'or' meant that the jury could find the defendant guilty even though no money was exchanged." He contends:

> [U]nder the jury instruction as recited by the trial court, a defendant could be found guilty if the jury believed that he intentionally commanded, encouraged or requested the girls engage in sexual intercourse or other sex acts on an ongoing basis. This error gave the jury instruction a wholly different meaning, thereby undermining the outcome of the trial.

In response, the State asks us to reject Lor's allegation, noting that defense counsel did not object to the trial court's instruction. Thus, the State explains, it would be equally plausible to conclude that the court reporter simply misheard the judge's words. In addition, the State asserts that any such error could not have caused the jury to misunderstand the law. The State is correct. First, defense counsel's failure to object waived the issue. *See* ***State v. Smith***, 170 Wis.2d 701, 714 n.5, 490 N.W.2d 40, 46 n.5 (Ct. App. 1992). Second, irrespective of whether counsel waived the issue, we conclude that, given the issues, closing arguments of counsel, the submitted instructions, and the providing of written instructions to the jury, the alleged misstatement would not have misled the jury.

Lor next argues that the evidence was insufficient to support his conviction because, he contends, none of the witnesses testified that they saw Lor receive money. He also maintains that those witnesses who testified that money was involved in the crimes were testifying on behalf of the State and, therefore, were motivated to conform their testimony to the State's theories. In reviewing a challenge to the sufficiency of the evidence, we

> may not substitute [our] judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility

> exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990) (citations omitted). Thus, "[t]his court will only substitute its judgment for that of the trier of fact when the fact finder relied upon evidence that was inherently or patently incredible—that kind of evidence which conflicts with the laws of nature or with fully established or conceded facts." ***State v. Tarantino***, 157 Wis.2d 199, 218, 458 N.W.2d 582, 590 (Ct. App. 1990).

Contrary to Lor's argument, sufficient evidence established that Lor solicited the girls for prostitution.[7] Lor's own words, and those of his customers, established that he was prostituting the girls for money. Lor's friend, Tong Vang, testified that Lor told him directly that whoever wanted to have sex with the girls had to pay him (Lor). In addition, Sa Vang testified that Lor came to his house, told him that he had some girls and invited him to come along for a ride. Sa Vang then described how Lor first took them to Club 29, and then to the EconoLodge, where he saw Lor escort Amber, Tara, Mang, and four or five men into the motel. Sa Vang testified that when he asked Lor what all the other men were doing there, Lor told him that he was making money from the girls. Lor argues that Sa Vang's testimony was incredible because he entered into a plea agreement with the State. We reject his argument, however, because he asks us to determine the weight of the evidence and credibility of the witnesses, which are determinations to be made by the trier of fact. *See* ***Poellinger***, 153 Wis.2d at 504, 451 N.W.2d at 756.

[7] Section 948.08, STATS., provides: "Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a Class BC felony."

Accordingly, we conclude that the evidence was sufficient to support Lor's conviction for solicitation.

Lor also claims that the State failed to prove the charge of second-degree sexual assault[8] of Amber. He contends that because the State failed to introduce either a certified birth certificate or a stipulation to Amber's age, the evidence was insufficient to establish one of the elements of second-degree sexual assault. Lor is wrong. The law does not require the introduction of either a birth certificate or a stipulation; it simply requires evidence of the victim's age at the time of the crime. Here, sufficient evidence established that Amber was under the age of sixteen at the time of the crime. On direct examination, Mang testified that Amber was fourteen years old when they met in March 1996. Lor fails to explain why this testimony was insufficient to prove Amber's age. *See* ***State v. O'Connell***, 179 Wis.2d 598, 609, 508 N.W.2d 23, 27 (Ct. App. 1993) ("We do not consider undeveloped arguments.").

By the Court.—Judgment affirmed.

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

[8] Section 948.02(2), STATS., provides: "Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class BC felony."