

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 3, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

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**Appeal No. 2004AP844-CR**

**Cir. Ct. No. 2003CF196**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DANIEL L. TERENS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Winnebago County: ROBERT A. HAWLEY, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Daniel L. Terens has appealed from a judgment convicting him of second-degree recklessly endangering safety, third-degree sexual assault, fourth-degree sexual assault, battery, two counts of intimidating a victim, and two counts of disorderly conduct. The convictions arose from assaults

on Terens' ex-wife, Christine, on April 9, 2003, and April 29, 2003. On appeal, Terens contends that the trial court erroneously exercised its discretion by admitting other-acts evidence concerning his physical assault of Christine in March 2001, and evidence of a general pattern of abuse by Terens over the course of his twenty-year relationship with Christine. Because we conclude that the trial court properly admitted the other-acts evidence, we affirm the judgment.

¶2 At trial, Christine testified regarding the April 9, 2003 and April 29, 2003 incidents that led to the current convictions. She testified that on April 9, 2003, a drunken Terens argued with her in the kitchen of their mobile home about their deceased son and old boyfriends of Christine's. She testified that Terens grabbed her crotch, shoved his fingers into her vagina through her clothing, and told her "[t]his is the way you like it," while calling her abusive names. She testified that Terens then ripped off her clothes and reinserted his fingers in her vagina while straddling her, putting a knife to her throat and threatening to kill her. According to Christine's testimony, she tried to scoot away, but Terens threw knives at her, leaving numerous marks in the linoleum. Christine testified that he also grabbed her nipple and threatened to cut it off, desisting only when she had difficulty breathing and needed to use her inhaler.

¶3 Christine testified that she was scared and did not report the April 9, 2003 incident when it happened. She testified that Terens told her that he would kill her if she told anyone about it.

¶4 Christine also testified concerning the April 29, 2003 incident. She testified that Terens was again intoxicated and wanted her to watch pornographic movies with him. She testified that she eventually went to bed, but was awakened when Terens shined a flashlight in her face and swore at her, telling her to move

over. She testified that she grabbed the flashlight and threw it, whereupon Terens shoved her off the bed and into a dresser, resulting in bruises on her arm and leg. She testified that Terens then forced her back onto the bed, straddled her and pinched her right breast, causing it to bruise, while calling her names and saying “[t]his is the way you like it.”

¶5 Christine testified that after the April 29, 2003 assault, Terens threw her cell phone into a field outside. She testified that he continued to drink beer until he fell asleep and she left for work. She testified that she told her eighteen-year-old son, Scott, about both incidents when he came to help her with her car after work that day. Scott then drove with her to the police department, where she reported both of the April 2003 incidents. The police officer who took her statements testified that she only reluctantly reported the April 9 incident, and that she broke down sobbing and expressing her fear of Terens while relating the incident. The officer also reported observing bruises on Christine’s breast, arm and knee.<sup>1</sup>

¶6 At trial, Christine was permitted to testify regarding an incident in March 2001 in which an intoxicated Terens argued with her about their deceased son, verbally abused her, slapped her in the head and pushed her into a wall, causing a skull fracture. In addition, she was permitted to testify concerning a general pattern of abuse throughout their twenty-year relationship.

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<sup>1</sup> This officer testified that she subsequently took a statement from Terens in which he admitted shining a flashlight into Christine’s face, shoving her off the bed and into a dresser, and throwing her cell phone into a field so that she could not call the police. Another officer testified to observing nineteen knife-point marks in the kitchen linoleum.

¶7 Christine testified that she and Terens were married in 1983, divorced in 1992, and reunited in 2000, living together until the April 29, 2003 incident. She testified that Terens was frequently physically and verbally abusive, drank heavily and often argued about her old boyfriends and the death of their son. She testified that he monitored her behavior, telling her how long she could be gone places and sometimes disabling her vehicle to prevent her from going places. She testified that she sometimes called the police and sometimes did not, that she was afraid of Terens, and that he regularly promised to change his ways and stop abusing her, promises she sometimes believed and sometimes did not.

¶8 The parties' son, Scott, corroborated his mother's testimony regarding the nature of her relationship with Terens, stating that except for the period of time when he was placed in foster care, he regularly observed fighting and abuse in his home, saw his mother injured "a lot," and observed black eyes and bruises on her. Scott also testified that his father drank a great deal and would argue about his mother's past boyfriends, Scott's deceased brother, or other things if he was not getting his way. Scott testified that his father was controlling as to his mother, that his father would damage property or break things, and that he thought his mother feared his father.

¶9 In addition to the testimony of Christine, Scott, and the investigating officers, the State also presented the testimony of Dr. Darald Hanusa, a domestic violence expert. Although Dr. Hanusa did not testify concerning the specific relationship of Terens and Christine, he testified as to the general characteristics of domestic abuse perpetrators and victims, and the patterns of physical, psychological and verbal abuse which typically characterize abusive relationships. His testimony included a discussion of reasons why a victim would fail to report abuse, including fear, shame, and the bond that frequently connects victims to

their abusers. In addition, he testified that cycles of verbal and psychological abuse coupled with episodes of violence are common in abusive relationships, and that the risk of violence frequently increases when a perpetrator is intoxicated.

¶10 Terens contends that the trial court erroneously exercised its discretion by admitting the other-acts evidence concerning his physical assault of Christine in March 2001, and the testimony of Christine and Scott concerning a general pattern of abuse by Terens over the course of his relationship with Christine. We conclude that the trial court properly exercised its discretion in admitting the evidence.

¶11 “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.” WIS. STAT. § 904.04(2) (2003-04).<sup>2</sup> However, other-acts 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. *Id.* Other-acts evidence may also be admitted to show the context of the crime and to provide a complete explanation of the case. *State v. Hunt*, 2003 WI 81, ¶58, 263 Wis. 2d 1, 666 N.W.2d 771, *reconsideration granted on other issues*, 2003 WI 140, 266 Wis. 2d 68, 671 N.W.2d 853. The exceptions stated under § 904.04(2) are not mutually exclusive and are impossible to state with categorical precision. *State v. Hammer*, 2000 WI 92, ¶29 n.4, 236 Wis. 2d 686, 613 N.W.2d 629. The same evidence may fall into more than one exception. *Id.*

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2003-04 version.

¶12 When determining whether to admit other-acts evidence, the trial court must consider: (1) whether the evidence is offered for a permissible purpose; (2) whether the evidence is relevant; and (3) whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the jury or needless delay. *Hunt*, 263 Wis. 2d 1, ¶32. The party who seeks to use other-acts evidence bears the burden of establishing its relevance. *Id.*, ¶53. The opponent of the admission of the evidence has the burden of establishing that its probative value is substantially outweighed by unfair prejudice. *Id.*

¶13 The standard of review of the trial court's decision to admit other-acts evidence is whether the trial court exercised appropriate discretion. *Id.*, ¶34. We will sustain a discretionary act if the trial court examined the relevant facts, applied a proper standard of law, used a demonstrated rational process, and reached a conclusion that a reasonable judge could reach. *Id.* However, regardless of the extent of the trial court's reasoning, we will uphold the trial court's decision if there are facts in the record which would support the trial court's decision if it had fully exercised its discretion. *Id.*, ¶52.

¶14 The trial court properly exercised its discretion in admitting the other-acts evidence in this case, concluding that it was admissible and relevant to show Terens' motive, intent, preparation or plan, and to establish the nature of his relationship with Christine. The trial court also rejected Terens' argument that the probative value of the evidence was outweighed by its inflammatory nature, and gave a cautionary instruction to the jury limiting its use of the evidence to proper purposes.

¶15 The trial court's decision is fully supported by the record. The evidence concerning the March 2001 incident and the general evidence regarding

a pattern of abuse by Terens provided insight into the circumstances of Terens and Christine's household, and thus was relevant and admissible to show the context of the crimes and provide a complete understanding of the case. *See id.*, ¶¶58-59. It provided an understanding of the abuse that took place in the home, the authority and control that Terens attempted to exercise over Christine, and his willingness to use violence to maintain his control. In conjunction with Dr. Hanusa's testimony, it assisted the jury in assessing the credibility of Terens and Christine, including helping the jurors understand why Christine did not immediately report the April 9, 2003 incident and why she remained in the relationship.

¶16 The trial court also reasonably concluded that the evidence was relevant and admissible to establish Terens' motive for the crimes, and his purpose or plan in committing them. Absent the evidence, the jury may have questioned why Terens would have physically and sexually assaulted Christine in April 2003. Evidence regarding his prior abusive behavior, in conjunction with Dr. Hanusa's testimony, was relevant to establish his motive of controlling and intimidating Christine, and his purposeful use of sexual and physical assault to control and humiliate her. Closely related, the evidence showed his plan of using physical and psychological force, coercion or intimidation to achieve his aim of maintaining power and control in his relationship with Christine.

¶17 The evidence regarding the March 2001 assault and Terens' history of assaultive behavior was also relevant and admissible to establish Terens' intent in committing at least four of the charged crimes. As set forth in the jury instructions given in this case, intent was an element of the battery and victim intimidation charges against Terens. In addition, the jury was instructed that the second-degree sexual assault charge against Terens required that he had sexual

contact with Christine with the intent to cause bodily harm, and that he intentionally touched her intimate parts for the purpose of sexually degrading or humiliating her, or for the purpose of becoming sexually aroused. The evidence that Terens had intentionally beaten or abused Christine in the past was probative of whether he committed the April 9 and 29, 2003 offenses with the requisite intent and purpose. *See id.*, ¶¶60-61.

¶18 In evaluating the relevancy of the March 2001 incident and the evidence regarding Terens' abusive history, we also note that the probative value of other-acts evidence depends on its nearness in time, place and circumstance to the alleged crime. *See id.*, ¶64. The March 2001 assault was only two years before the April 2003 incidents. In addition, it involved verbal abuse followed by an assault on Christine, and occurred when Terens was intoxicated and arguing with Christine about their deceased son. Its nearness in time and circumstance rendered it probative as to the April 2003 charges. In addition, the similarity in circumstances between Terens' prior abuse of Christine and the April 2003 incidents rendered the general history of that abuse probative in this case.<sup>3</sup>

¶19 The record thus clearly supports the trial court's determination that the other-acts evidence challenged by Terens was admissible for permissible purposes under WIS. STAT. § 904.04(2) and was relevant to the issues of this case.

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<sup>3</sup> The similarity in circumstances between Terens' prior conduct toward Christine and the April 2003 offenses distinguishes this case from *State v. Cofield*, 2000 WI App 196, 238 Wis. 2d 467, 618 N.W.2d 214, a case relied on by Terens. The prior acts held to be inadmissible in *Cofield* involved different victims than the victim in the charged offense, not an offender and victim with a lengthy relationship history. *See id.*, ¶¶12-13.



¶20 Based on the significant probative value of the evidence, the trial court also reasonably rejected Terens' claim that its probative value was substantially outweighed by the danger of unfair prejudice. "Unfair prejudice results when the proffered evidence has a tendency to influence the outcome by improper means or if it 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." *State v. Sullivan*, 216 Wis. 2d 768, 789-90, 576 N.W.2d 30 (1998). "The inquiry is not whether the other acts evidence is prejudicial but whether it is *unfairly* prejudicial." *State v. Gray*, 225 Wis. 2d 39, 64, 590 N.W.2d 918 (1999).

¶21 While the other-acts evidence was detrimental to Terens, the record provides no basis to conclude that it was unfairly prejudicial or that its probative value was substantially outweighed by the danger of unfair prejudice. Moreover, the trial court gave appropriate cautionary instructions limiting the jury's use of the evidence to proper purposes. Such cautionary instructions eliminate or minimize the potential for unfair prejudice. *Hammer*, 236 Wis. 2d 686, ¶36. Because the instructions eliminated or greatly diminished the potential for prejudice, the trial court's decision admitting the evidence is upheld. *See Hunt*, 263 Wis. 2d 1, ¶¶72-75.

*By the Court.*—Judgment affirmed.

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

