

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2001

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-3100-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL K. NETT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Calumet County:
DONALD A. POPPY, Judge. *Affirmed.*

Before Brown, Anderson and Snyder, JJ.

¶1 PER CURIAM. Daniel K. Nett appeals from the judgment of conviction entered against him. He argues on appeal that the trial court improperly allowed the introduction of other acts evidence. Because we conclude that the evidence was properly admitted, we affirm.

¶2 Nett was convicted after trial of two counts of sexual contact with a child under the age of thirteen and two counts of sexual intercourse with a child under the age of thirteen. The court sentenced him to two consecutive sentences of forty years on the first two counts, and withheld sentence and placed him on twenty years' probation consecutive to the prison sentences on the second two counts.

¶3 Nett was charged with having had sexual contact and sexual intercourse with S.K.K., the ten-year-old daughter of the woman with whom he lived. Prior to trial, the State moved to be allowed to introduce the testimony of T.A.B. The court allowed the testimony. T.A.B. testified that her mother had been engaged to Nett and that he had lived with them for four years. During that time, he had repeated sexual contact and intercourse with her whenever her mother was not at home. She also testified that he threatened to kill her if she told anyone. She was eight years old when the assaults began. Both S.K.K. and T.A.B. described the assaults in detail.

¶4 The general framework for determining whether other acts evidence is properly admissible is determining “(1) whether the other crimes evidence is offered for one of the purposes set forth in WIS. STAT. § (Rule) 904.04(2), and (2) whether the danger of prejudice from the admission of such evidence outweighs its probative value.” *State v. Davidson* 2000 WI 91, ¶35, 236 Wis. 2d 537, 613 N.W.2d 606. WISCONSIN STAT. § 904.04(2) (1999-2000), provides that:

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.

¶5 We conclude that the circuit court properly allowed the admission of this evidence. This evidence was relevant for a number of reasons. The similarities between the assaults described by the two witnesses are striking. Both were young girls about the same age when the assaults occurred. The girls were the daughters of Nett's girlfriends and he lived in their homes. The assaults began with similar grooming behaviors in both cases, and progressed to sexual intercourse. The assaults always occurred when the girls' mothers were out of the home. He told both girls not to tell anyone and tried to bribe one of them and threatened the other one. This evidence established motive, intent, preparation, plan and knowledge. The evidence was particularly important because Nett attempted to attack S.K.K.'s credibility.

¶6 We also conclude that the prejudicial nature of the evidence did not outweigh its probative value. All evidence of culpability is prejudicial against a defendant. Unfair prejudice results when

the proffered evidence, if introduced, would have 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. Mordica, 168 Wis. 2d 593, 605, 484 N.W.2d 352 (Ct. App. 1992). The evidence in this case did not inflame the jury nor cause it to convict Nett just because he was a bad person. We conclude that the evidence was not unfairly prejudicial.

¶7 Although greater latitude is allowed in admitting other acts evidence in cases involving the sexual assault of children, *Davidson*, 2000 WI 91 at ¶51, we need not apply the more liberal standard here. The other acts evidence offered here was admissible even without the more liberal standard provided for cases

involving the sexual assault of children. For the reasons stated, the judgment of the circuit court is affirmed.

By the Court.—Judgment affirmed.

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

