

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 15, 2002

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.

**Appeal No. 01-2384-CR
STATE OF WISCONSIN**

Cir. Ct. No. 99-CF-11

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DELMAR A. KREIER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County:
DANIEL W. KLOSSNER, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Delmar Kreier appeals a judgment convicting him on six felony and misdemeanor charges. The issues concern the trial court's exclusion of certain evidence and testimony at Kreier's jury trial. We affirm.

¶2 Christopher Schneider, then a juvenile, confessed to breaking into an unoccupied farm house and adjacent barn, stealing various items, and setting the barn on fire. Kreier and his son, Bud, had formerly lived on the farm and Schneider named both as accomplices. Consequently, the State filed multiple charges against all three. Both Schneider and Bud accepted plea bargains to reduced charges, with Schneider agreeing to testify against Kreier.

¶3 At Kreier's trial, Schneider testified that he, Bud, and Kreier collaborated in the crimes, describing the role of each in great detail. He acknowledged on cross-examination that he received a favorable plea bargain in exchange for his testimony. He also acknowledged another burglary conviction and admitted to other burglaries "once or twice."

¶4 Bud also testified. Notwithstanding his no contest plea, he denied his own and his father's role in Schneider's acts. He admitted that both he and the elder Kreier were with Schneider at the farm on the night of the burglary. However, he asserted that they were there looking for a lost dog and were not involved in or aware of Schneider's acts. Bud explained that he entered his no contest plea under pressure. The court did not allow him to testify that he had filed a motion to withdraw his plea.

¶5 Kreier proffered testimony including: (1) personal knowledge that Schneider was, in effect, a serial thief and burglar; (2) the fact that Schneider used an identical method of entry in a burglary subsequent to the one in this case; and (3) that Schneider falsely implicated an alleged accomplice in that subsequent burglary. The trial court refused to allow this proffered testimony. However, the court did allow witnesses to testify to Schneider's reputation as a liar, burglar, and thief and to exculpatory statements he made about Bud after the burglary. The

subject of this appeal is the trial court's exclusion of the proffered evidence, and its refusal to allow testimony on Bud's motion to withdraw his no contest plea.

¶6 A decision admitting or excluding evidence is subject to review under the erroneous exercise of discretion standard. *See State v. Plymesser*, 172 Wis.2d 583, 591, 493 N.W.2d 367 (1992). We will affirm an evidentiary ruling if it is reasonable. *Id.* In this case all of the trial court's rulings were reasonable.

¶7 Regarding the evidence of Bud's motion to withdraw his plea, the court noted there was no certainty that Bud would follow through on his motion after his father's trial, let alone succeed on it. Therefore, the court concluded, the relevance and significance of this evidence were uncertain. In addition, Bud fully explained why he entered the plea despite his claim of innocence, making evidence of the plea withdrawal motion cumulative, at best.

¶8 The evidence of Schneider's allegedly frequent and repetitive burglaries had no probative value as to either Bud's or Kreier's complicity in this burglary. It would have served no purpose other than to impeach Schneider's credibility. However, it was inadmissible for that purpose under WIS. STAT. § 906.08(2) (1999-2000).¹

¶9 Regarding Schneider's method of entry at another burglary (the Miller burglary), Kreier fails to adequately explain the probative value of this evidence. Schneider committed the Miller burglary several months after this

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

burglary. The trial court could reasonably decide that Schneider's method of entry in a later burglary has no bearing on whether Schneider committed this burglary with Kreier's aid and encouragement.

¶10 Finally, the evidence that Schneider falsely implicated another in one of his burglaries was also properly excluded. Schneider identified James Forbes as his accomplice in the Miller burglary. However, a jury acquitted Forbes of the subsequent burglary charge. Consequently, Kreier wanted Forbes to testify that Schneider falsely accused him in order to create the inference that Schneider falsely accused Kreier as well. However, whether Schneider in fact lied about Forbes was a disputed issue. The trial court reasonably concluded that the probative value of Forbes's testimony was substantially outweighed by the confusion that would ensue from a mini-trial on this collateral issue. That conclusion was a proper basis on which the court excluded the testimony. *See* WIS. STAT. § 904.03; *see also State v. Pulizzano*, 148 Wis.2d 190, 202, 434 N.W.2d 807 (Ct. App. 1988), *affirmed*, 155 Wis. 2d 633, 456 N.W.2d 325 (1990).

By the Court.—Judgment affirmed.

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

