COURT OF APPEALS
DECISION
DATED AND RELEASED

December 28, 1995

NOTICE

No. 95-2697-CR

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

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

THOMAS GUZMAN,

Defendant-Respondent.

APPEAL from an order of the circuit court for Portage County: VIRGINIA A. WOLFE, Judge. *Affirmed*.

EICH, C.J.[1] The State of Wisconsin appeals from an order denying its request for the admission of expert testimony on "battered women's syndrome" in this battery case. The State sought admission of the evidence to explain the complainant's recantation of her initial accusations against the defendant. The issue is whether the court erroneously exercised its discretion in denying the state's request, and we conclude that it did not. We therefore affirm the order.

[1] This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

The facts are not in dispute. Guzman was charged with battery and criminal damage to property on the complaint of his girlfriend, Diana R., who lived with him. Diana R. told police that she and Guzman had been arguing when he accused her of infidelity, grabbed her by the hair and threw her into a piece of wooden furniture. Police observed a reddened lump on her head and noted that items of furniture in the residence had been broken.

The next day, Diana R. recanted her accusations, telling police and prosecutors that she had made a "mistake" in accusing Guzman. She said that Guzman had not grabbed her and thrown her into the furniture, but that she had bumped her head when she accidentally backed into a wall while they were embracing.

In light of Diana R.'s recantation, the prosecutor wrote to the trial court and defense counsel, stating that he intended to offer evidence from a "social work counselor ... regarding the phenomenon of ... battered women's syndrome" in explanation of Diana R.'s conduct.

A hearing was held on the State's request and the prosecutor presented the testimony of three witnesses as an "offer of proof" with respect to the "battered women's syndrome" evidence he wished to introduce. He first questioned Diana R. at some length about the events of the evening in question, and she consistently denied that anything untoward had occurred between her and Guzman that night. She testified that she got the lump on her head by accidentally backing into a wall. And while she acknowledged that she was aware that Guzman had been convicted of violent crimes and misdemeanors in the past, she denied that Guzman had ever abused her or that she was afraid of him.

The prosecutor then called the investigating police officer, who testified that Diana R. had told him that she received the lump on her head at Guzman's hands that evening, that she had been dating Guzman for three years, "and that [she] and her family were tired of her mental and physical abuse." The officer stated that Diana R. had not given "any specific examples of prior inciden[t]s of battery by Mr. Guzman."

The prosecutor called Cheryl Klawikowski, a "crisis counselor" at the La Crosse Family Crisis Center. Klawikowski stated that, in the course of her duties at the center, she had counseled about 500 women who have been victims of family violence. Klawikowski testified that she has a B.A. degree in psychology "with a human services emphasis which is counseling," and that, as a result of her training and experience, she has become familiar with the condition known as battered women's syndrome.

Over Guzman's objections, Klawikowski testified as to various behavioral aspects of battered women's syndrome, including a tendency to engage in denial and to recant accusations of abuse made against the abusive partners. According to Klawikowski, battered women's syndrome is the result of "a history of violence" between the woman and her partner.

The prosecutor offered Klawikowski's testimony as an explanation of Diana R.'s recantation of her initial accusations against Guzman, stating to the court that her testimony was "essential" to the State's case. Guzman argued that there was insufficient foundation for Klawikowski to testify as an expert on battered women's syndrome and, further, that her testimony should be disregarded because there was no evidence of a history of abuse between Diana R. and Guzman, one of the foundations (according to Klawikowski) of the syndrome.

The court agreed with Guzman and rejected the prosecution's offer of proof, explaining its decision as follows:

> I am going to deny that testimony coming in. I will state at the outset that in no way says what I do not believe there is such a thing as a battered women's syndrome. I believe that it does exist. I believe I have experienced it numerous times in my work in law and the legal profession.
>
> However, in this case I don't believe there is sufficient evidence to give rise to the need for that testimony. We have a situation where there is no dispute that [Diana R.] was in the midst of an

> argument with the defendant, that she did call the police, that they responded. At that point that she was very upset. I believe one officer said she was hysterical.
>
> I don't know that the only conclusion that someone can draw from that is that that makes a situation of domestic abuse. Her statement ... was that ... she and her family were tired of the mental and physical abuse she has suffered over the three years of dating. But I think as [Guzman's counsel] questioned there were no specific examples, and now, certainly, [Diana R.] denies even the event as she reported it that evening.
>
> I think recantations exist frequently. They don't only occur in domestic abuse situations. Given this record the court does not find there is sufficient evidence for it to even open the door for the offer of the additional evidence of battered women's syndrome.
>
> .... I will rule that we have not crossed the threshold for the battered women's syndrome to be an area that the jury should have offered it as an explanation for the now recantation.

The court, responding to Guzman's counsel's questions, then stated that its ruling was "that the ... expert testimony would not be relevant ..." and, additionally, that the court did "not believe [Klawikowski] is qualified to testify on the syndrome itself."

We review trial court decisions on the admission or rejection of evidence for an erroneous exercise of discretion. ***State v. Alsteen***, 108 Wis.2d 723, 727, 324 N.W.2d 426, 428 (1982). In ***Burkes v. Hales***, we discussed at some length the scope of our review of a trial court's discretionary act:

A court exercises discretion when it considers the facts of record and reasons its way to a rational, legally sound conclusion. It is "a process of reasoning" in which the

> facts and applicable law are considered in arriving at "a conclusion based on logic and founded on proper legal standards." Thus, to determine whether the trial court properly exercised its discretion in a particular matter, we look first to the court's on-the-record explanation of the reasons underlying its decision. And where the record shows that the court looked to and considered the facts of the case and reasoned its way to a conclusion that is (a) one a reasonable judge could reach and (b) consistent with applicable law, we will affirm the decision even if it is one with which we ourselves would not agree.
>
> It need not be a lengthy process. While reasons must be stated, they need not be exhaustive. It is enough that they indicate to the reviewing court that the trial court "undert[ook] a reasonable inquiry and examination of the facts" and "the record shows that there is a reasonable basis for the ... court's determination." Indeed, "[b]ecause the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary decisions."

Burkes v. Hales, 165 Wis.2d 585, 590-91, 478 N.W.2d 37, 39 (Ct. App. 1991) (citations and quoted sources omitted).

We have from time to time described the deference we owe to a trial court's discretionary decision as "`"a limited right to be wrong."'" ***State v. McConnohie***, 113 Wis.2d 362, 370, 334 N.W.2d 903, 907 (1983). This is so because we will uphold an appropriate exercise of discretion even though we may ourselves disagree with the decision. The test is not whether we would have decided the matter differently; "it is enough that a reasonable judge could have so concluded ...." ***Schneller v. St. Mary's Hosp. Medical Ctr.***, 155 Wis.2d 365, 376, 455 N.W.2d 250, 255 (Ct. App. 1990), *aff'd*, 162 Wis.2d 296, 470 N.W.2d 873 (1991). Thus, in reviewing evidentiary issues, the question on appeal is not whether this court, ruling initially on the admissibility of the evidence, would have allowed it or rejected it but only whether the trial court appropriately

exercised its discretion in ruling as it did. ***Alsteen***, 108 Wis.2d at 727, 324 N.W.2d at 428.

The transcript of the trial court's decision leaves no doubt in our minds that the trial court reasoned its way to a decision when it rejected the prosecution's offer of proof. The court's remarks indicate that it ruled that, given Klawikowski's testimony that battered women's syndrome is based on a history of domestic abuse, and given Diana R.'s denial of any such history in her relationship with Guzman, the threshold for admission of testimony on the syndrome had not been met. The question is whether that decision is one a reasonable judge could reach on the facts of the case and the applicable law, and while we may have reached a different result had we been sitting as the trial court in this case, we cannot say that its resolution of the matter lacked a rational basis. It follows, under the standards discussed above, that the court did not erroneously exercise its discretion in denying the prosecutor's motion.

In so deciding we reject the State's argument that ***State v. Bednarz***, 179 Wis.2d 460, 507 N.W.2d 168 (Ct. App. 1993), compels a different result as a matter of law.[2] We discussed the admissibility of battered women's syndrome testimony as an explanation for the victim's recantation of a battery complaint against her boyfriend at some length in ***Bednarz***, concluding that, in appropriate cases, "[a] trial court, in its discretion, may permit expert testimony concerning this subject matter as the facts in the case warrant," and that the trial court did not misuse its discretion in allowing such evidence in that case. ***Id***. at 468, 507 N.W.2d at 172.

The State argues that because the facts of this case are "dramatically similar" to those in ***Bednarz***, ***Bednarz*** controls the outcome here: that because we affirmed the decision to allow such evidence in that case, neither we nor the trial court may rule it out in this one. We reject the argument. As we have discussed above, the question in any appeal of a discretionary ruling by the trial court is not whether we agree or disagree with the result--or whether we think it is the right or the best result--but simply whether, according to the standards we have discussed above, the trial court

[2] If a trial court's discretionary decision is based upon an error of law, the decision exceeds the limits of the court's discretionary powers. ***State v. Wyss***, 124 Wis.2d 681, 734, 370 N.W.2d 745, 770 (1985).

erroneously exercised its discretion in arriving at its decision. The fact that, in some other case, we upheld the trial court's exercise of discretion to allow evidence on a certain subject under certain facts, does not mean that we must overturn a court's discretionary determination to reject evidence on a similar subject on similar facts in another case. And that is because, under the law, we don't play "match the facts" in reviewing discretionary decisions; we look, as we have said, to the reasons underlying the court's decision, sustaining the decision if it is one a reasonable judge could reach and reversing it if it is not. Under such a test it is not inconsistent to uphold the trial court's exercise of discretion in allowing battered women's syndrome evidence in ***Bednarz*** and upholding the trial court's decision to disallow it in this case. In either situation, we cannot say that the trial court's resolution of the issue lacked a rational basis.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.