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STATE OF WISCONSIN CIRCUIT COURT BRANCH 38 MILWAUKEE COUNTY

FILED
12-22-2017
John Barrett
Clerk of Circuit Court

State of Wisconsin vs. Willie E Nelson Jr

Judgment of Conviction

Amended
Sentence to Wisconsin State
Prisons and Extended
Supervision
Case No. 2014CF001966

Date of Birth: 12-04-1979

The defendant was found guilty of the following crime(s):

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
3	2nd Degree Sexual Assault of Child	948.02(2)	Not Guilty	Felony C	04-21-2014 between 04/21/14 and 04/28/14	Jury	06-10-2016

IT IS ADJUDGED that the defendant is guilty as convicted and sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Agency	Comments
3	09-23-2016	State Prison w/ Ext. Supervision	16 YR		with credit for 237 days time served. *** 12-20-17, Judge Wagner; Court ordered the term of initial confinement modified to 7 YEARS. All other terms as to the previous sentence to remain as ordered.***

Total Bifurcated Sentence Time

Confinement Period					Extended Supervision			Total Length of Sentence		
Ct.	Years	Months	Days	Comments	Years	Months	Days	Years	Months	Days
3	7	0	0		9	0	0	16	0	0

Ct.	Sent. Date	Sentence	Length	Agency	Comments
3	09-23-2016	Costs			* Defendant to pay all applicable costs and surcharges, and supervision fees or CIVIL JUDGMENT will be entered. * Defendant shall provide a DNA sample for the Data Bank and pay all appropriate costs. * The Court ordered that all court costs, fees, surcharges and/or restitution be paid through collection by the Department of Corrections from 25% of funds under Sec. 973.05(4)(b) and as a condition of extended supervision. Any amount remaining due and owing is subject to civil judgment and/or tax intercept or other means.
3	09-23-2016	Firearms/Weapons Restrict			* No firearms; weapons. * Court advised defendant that his voting rights are suspended and he may not vote in any election until his civil rights are restored. * Court advised defendant that as a convicted felon he may never possess a firearm or body armor. The Court also advised the defendant that because he was convicted of a violent felony under Section 941.29 he may not possess a firearm within 5 years of completing sentence or he will be subject to a mandatory 3 year initial confinement.

A101

STATE OF WISCONSIN

CIRCUIT COURT BRANCH 38

MILWAUKEE COUNTY

FILED
12-22-2017
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Clerk of Circuit Court

State of Wisconsin vs. Willie E Nelson Jr

Judgment of Conviction

Amended

Sentence to Wisconsin State
Prisons and Extended
Supervision

Date of Birth: 12-04-1979

Case No. 2014CF001966

Conditions of Extended Supervision:

Ct.	Condition	Agency/Program	Comments
3	Employment / School		* Obtain and maintain employment and/or school and/or vocational training.
3	Prohibitions		* No contact with the victim(s) without prior court/agent approval. Any violation may result in additional charges.
3	Other		* Sex offender assessment and follow through with recommended programming. * Cognitive intervention programming. * Pursuant to 973.048, defendant to comply with the reporting requirements under 301.45 for the sex offender registry with DOC.
3	Alcohol assessment		* Defendant to participate in Alcohol and Drug Assessment and successfully complete recommended treatment. * Maintain absolute sobriety. No drugs. No alcohol. * Random urine screens and breathalyzer test.

Conditions of Sentence or Probation

Obligations: (Total amounts only)

Fine	Court Costs	Attorney Fees	<input type="checkbox"/> Joint and Several Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge
	163.00			13.00	92.00		250.00

Pursuant to §973.01(3g) and (3m) Wisconsin Statutes, the court determines the following:

The Defendant is is not eligible for the Challenge Incarceration Program.

The Defendant is is not eligible for the Substance Abuse Program.

IT IS ADJUDGED that 237 days sentence credit are due pursuant to §973.155, Wisconsin Statutes

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department.

If the defendant is in or is sentenced to state prison and is ordered to pay restitution, IT IS ORDERED that the defendant authorize the department to collect, from the defendant's wages and from other monies held in the defendant's inmate account, an amount or a percentage which the department determines is reasonable for restitution to victims.

If the defendant is placed on probation or released to extended supervision, IT IS ORDERED that the defendant pay supervision fees as determined by the Department of Corrections.

Distribution:

Ellen R. Brostrom-06, Judge
Sara Nicole Volden Schroeder, District Attorney
Michael S. Holzman, Defense Attorney

BY THE COURT:

Electronically signed by John Barrett
Circuit Court Judge/Clerk/Deputy Clerk

December 22, 2017
Date

A102

FILED
11-02-2017
John Barrett
Clerk of Circuit Court
2014CF001966

STATE OF WISCONSIN

CIRCUIT COURT
Branch 38

MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

WILLIE E. NELSON, JR.,

Defendant.

Case No. 14CF001966

**DECISION AND ORDER
PARTIALLY DENYING MOTION FOR POSTCONVICTION RELIEF
AND ORDER FOR MODIFICATION HEARING**

On August 10, 2017, the defendant filed a Rule 809.30 motion seeking a new trial on grounds of trial court error and resentencing on grounds that he provided substantial assistance to law enforcement. On June 10, 2016, a jury found the defendant guilty of one count of second degree sexual assault of a child,¹ and on September 23, 2016, Judge Ellen Brostrom sentenced him to eight years of initial confinement followed by nine years of extended supervision.²

The defendant first contends that the trial court erred in excluding evidence of the victim's prior allegations of sexual assault and in admitting other acts evidence of the defendant battering the victim. Following a motion hearing on June 10, 2015, Judge Timothy Dugan granted the State's motion to exclude improper character evidence of the victim's sexual relationships with other partners for the reasons set forth on the record. (*See State's Motion to Exclude Improper Character Evidence of the Victim* filed April 7, 2015 and Tr. 6/10/2015 pp. 4-

¹ The defendant was also found not guilty of two counts of trafficking of a child and one additional count of second degree sexual assault of a child.

² This court is the successor to Judge Brostrom's felony sexual assault calendar.

8). At a separate motion hearing on February 15, 2016, Judge Brostrom granted the State's motion to admit the defendant's prior act of battery against the victim, finding that the evidence was being offered for the permissible purpose of establishing motive, intent or modus operandi, that the evidence was relevant, and that the prejudicial value of the evidence did not substantially outweigh its probative value. (See State's Motion to Admit Prior Bad Acts filed August 11, 2015 and Tr. 2/15/2016, pp. 3-4). This court concurs with that conclusion and declines to reconsider either of the prior rulings on these issues.

The defendant also seeks resentencing on grounds that he provided substantial assistance to law enforcement and testified in a homicide case against Howard Davis (Case No. 14CF003716), which led to his conviction. He claims that his trial counsel was aware of this assistance but provided ineffective assistance in failing to provide this information to the sentencing court. Alternatively, the defendant argues that his substantial assistance to law enforcement is a new factor pursuant to *State v. Doe*, 280 Wis. 2d 731 (Ct. App. 2005). *Doe* instructs that assistance to law enforcement may constitute a new factor warranting *modification* (not resentencing), and that postconviction courts should consider the following in determining whether modification is warranted:

- (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
- (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
- (3) the nature and extent of the defendant's assistance;
- (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;
- (5) the timeliness of the defendant's assistance.

Doe, 280 Wis. 2d 731, ¶9.

The court has reviewed the defendant's motion and finds that he has set forth sufficient facts for the court to hold a modification hearing on his claim that he provided substantial assistance to law enforcement pursuant to *Doe*. While the defendant seeks a *Machner*³ hearing and resentencing on his claim that trial counsel was ineffective for failing to apprise the sentencing court of his cooperation, the remedy for ineffective assistance of this nature would be for the court to hold a modification hearing. Because a modification hearing will be scheduled, the court need not address whether counsel's performance was deficient.

THEREFORE, IT IS HEREBY ORDERED that the defendant's motion for a new trial on grounds of trial court error is **DENIED**.

IT IS FURTHER ORDERED that the clerk shall schedule a hearing on the defendant's motion for sentence modification based on cooperation with law enforcement.

Electronically signed by Judge Jeffrey A. Wagner

Circuit Court Judge/Circuit Court Commissioner/Register In Probate

Circuit Court Judge

Title (Print or Type Name if not eSigned)

11/02/2017

Date

³ *State v. Machner*, 92 Wis.2d 797 (Ct. App. 1979).

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CERTIFICATION OF FILING OF TRANSCRIPT

As a Court Reporter in and for Milwaukee County, I do hereby certify that I am filing the following transcript of proceedings with the Clerk of Circuit Court, Milwaukee County, Wisconsin on:

Defendant: WILLIE E. NELSON, JR.

Case No.: 2014CF001966

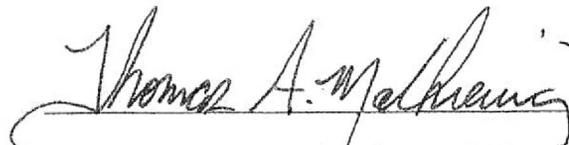
COPY

Name/Date of Proceedings: MOTION HEARING

JUNE 10, 2015

Copy provided to:

Public Defender: MR. MICHAEL HOLZMAN
400 West Moreland Blvd.
Waukesha, WI 53188-2412


Thomas A. Malkiewicz, RPR, RMR, CRR
Official Court Reporter

EX 1106

1 up a phone and called me and asked me about it.
2 It may have saved him a whole lot of effort with
3 regard to the motions that he's put together with
4 regard to these medical records.

5 THE COURT: All right. Satisfied with
6 that answer?

7 MR. GUERIN: There is still other
8 medical records that are out there. In addition,
9 there's some police reports were turned over
10 Friday in which when we talk about other acts,
11 the statements by the alleged victim in this case
12 admits to the police of having unprotected sex
13 with a different individual between late April,
14 2014, and early May, 2014, and in addition later
15 DNA test as you may be aware showed that the
16 father of the baby is not my client.

17 THE COURT: Okay. How do you get around
18 the rape shield statute, and why is any of that
19 relevant?

20 MR. GUERIN: It is highly relevant
21 because there are -- Let's first address the
22 April 7th motion to exclude improper character
23 evidence. The original criminal complaint,
24 according to the D.A., section describes how the
25 defendant took M.B. to prostitute in Milwaukee,

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1 Waukesha, Green Bay, and Appleton. Those are
2 statements by the alleged victim in this case.

3 In addition, that the alleged victim
4 gave birth to a new child. Paternity test was
5 conducted, and the newborn child is someone other
6 than the defendant. Once again, that is a
7 statement made by the alleged victim pointing
8 accusations at my client. There is --

9 THE COURT: Wait, wait, wait. She,
10 because this child is from another man that's
11 directing allegations at the defendant?

12 MR. GUERIN: She did. She accused,
13 before the baby was born, Mr. Nelson of being the
14 father.

15 THE COURT: Okay. And it turned out he
16 wasn't, but she's having sex with all these guys
17 allegedly at the defendant's direction, and she
18 becomes pregnant.

19 MR. GUERIN: Actually --

20 THE COURT: And maybe she's having
21 consensual sex with someone and he's not the
22 father. So what?

23 MR. GUERIN: Actually, Your Honor,
24 during the police reports that were given to me
25 Friday, there are statements by the alleged

A106

1 victim in this case that says late April, she no
2 longer had contact with Mr. Nelson and had, in
3 fact, gone with the father of the baby and was
4 held up in one of his houses that was one of
5 five, I believe, were raided that were found to
6 be houses of prostitution.

7 In addition, that father is a known pimp
8 who has records of posting on Backpage, there's
9 an issue of my client not having control of
10 anything during the time span of the second
11 allegation -- or at least the -- where the two
12 other counts come from of late April, 2014.

13 THE COURT: Okay. You can bring out
14 that she admitted to the police officers that she
15 didn't have any contact with him during the
16 second period of time. The fact that she was
17 being trafficked by one person leaves that person
18 and goes and traffics to another person, I don't
19 see how you get around the rape shield under
20 those circumstances.

21 MR. GUERIN: Well, and part of the other
22 request of my motions are to look into the prior
23 allegations that she was arrested for
24 prostitution before even meeting Mr. Nelson.
25 There are even accusations -- or statements by

A109

1 the alleged victim in this case that she was
2 afraid of the police because she had been
3 arrested in other states for similar acts, which
4 those acts in coming to the state would predate
5 meeting Mr. Nelson.

6 THE COURT: Again, why is that relevant?
7 And how do you get around the rape shield for
8 prior sexual conduct not relevant? The fact that
9 she was an ongoing prostitute.

10 MR. GUERIN: It goes to her having a
11 source of knowledge as to how to know the tricks
12 of the trade. She didn't gain this knowledge as
13 being alleged in this complaint through
14 Mr. Nelson. She was aware of this and had to
15 engage in this in other states.

16 There are -- In addition, she's
17 claiming untruthful sexual allegations, or sexual
18 assaults. She's implying my client on the second
19 count sexually assaulted her and said, listen, I
20 can prove it. There's a bottle, a bottle that
21 will have his DNA and my DNA in one of the houses
22 that you raid. The State did a DNA test on that
23 bottle. That bottle came back. There was DNA of
24 the alleged victim, but not of my client.

25 THE COURT: Okay. That's admissible.

A110

1 The State's not objecting to that.

2 MR. GUERIN: Okay.

3 THE COURT: As to the -- she made the
4 allegation and said I had sex with the defendant
5 and I spit his semen into this bottle and the
6 State's tested it and it doesn't have his DNA on
7 it, of course that's relevant. But all of her
8 other sexual activity is not admissible under
9 972.11 as noted by the State, which specifically
10 provides that any evidence concerning the
11 complainant's complaining witness's prior sexual
12 conduct or opinions of the witness's prior sexual
13 conduct and reputation as to prior sexual conduct
14 shall not be admitted into evidence during the
15 course of the hearing or the trial nor shall any
16 reference to such conduct be made in the presence
17 of the jury except evidence of the complaining
18 witness's past conduct with the defendant,
19 evidence of specific instances of sexual conduct
20 showing the source or origin of semen, evidence
21 of, and impregnancy or disease for use in
22 determining the degree of sexual assault or the
23 extent of injury suffered, evidence of prior
24 untruthful allegations of sexual assault made by
25 the complaining witness. And that's the limited

A111

1 basis that her prior sexual conduct gets to come
2 in.

3 MR. GUERIN: Well, Your Honor, there is
4 State v. Baluziano (phonetic) which does set out
5 the factors in which we are allowed to make an
6 offer of proof to show the similarity between the
7 past acts of the alleged victim similar to the
8 charges that are here, but part of the reason I
9 can't present an offer on that is because I don't
10 have any juvenile records that I ask in a motion
11 to view under a protective order.

12 THE COURT: Well, first of all, I have
13 no authority to release any juvenile records.
14 And as a matter of fact, I have a huge stack of
15 records that are sitting in my chambers right now
16 that a juvenile judge said were sufficiently
17 relevant and appropriately to be released, and
18 made that initial review, that judge issues an
19 order that they be released to me for an in
20 camera inspection. I don't have any authority to
21 do what you're asking me to do.

22 MR. GUERIN: I did draft a motion on
23 that along with a brief citing support as to why
24 you do have that authority.

25 THE COURT: I'm not a juvenile court. I

A 112

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STATE OF WISCONSIN :CIRCUIT COURT: MILWAUKEE COUNTY
BRANCH 6

STATE OF WISCONSIN,
Plaintiff,

COPY

-vs-

Case No. 14-CF-001966

WILLIE E. NELSON JUNIOR,
Defendant.

MOTION HEARING

FEBRUARY 15, 2016

Proceedings held before the
Honorable ELLEN R. BROSTROM,
Circuit Court Judge Presiding.

A P P E A R A N C E S :

SARA SCHROEDER, Assistant District Attorney, appeared
on behalf of the State.

SCOTT ANDERSON, Attorney at Law, appeared on behalf
of the Defendant.

WILLIE E. NELSON JUNIOR, the Defendant, did not
appear.

NANCY CZERNIEJEWSKI, RPR
Official Court Reporter

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EXB

1 individuals caught in the car with the defendant,
2 it sounds like that was already admitted, but I'm
3 not 100 percent positive.

4 THE COURT: Okay, let me just see what
5 CCAP says.

6 So I have on December 3rd we were
7 here and the Court said that it would consider
8 the prior bad acts motion at the next court
9 appearance. On 12-7 we were here, and I don't
10 see any evidence that the Court actually ruled on
11 this motion-- Wait, I'm-- So I may have made a
12 tentative ruling, I don't think I made a full
13 ruling, let me just look one more place here so I
14 make sure I'm not missing something.

15 No, I don't think that I have. So
16 I guess it's probably worth making this a final
17 resolution. I do think it is admissible, and
18 probably that's what I indicated on the record
19 previously or maybe even CCAP is not accurate,
20 maybe I actually ruled and that's why.

21 Do the parties remember if I did?
22 I do think it's being offered for a permissible
23 purpose by establishing his motive or intent or
24 modus operandi. The basic element of a sex
25 trafficking charge like in this case is basically

A114

1 forced prostitution through violence and
2 intimidation. So I think that it does -- it's
3 relevant to that modus operandi, the intent to
4 traffick, et cetera, that's a permissible
5 purpose.

6 It's obviously relevant to that,
7 and I don't think that the allegation, frankly,
8 in the context of the facts that are going to be
9 alleged in association with the crimes charged, I
10 don't think their prejudicial value substantially
11 outweighs the probative value, so I'll grant the
12 State's prior bad acts motion.

13 MS. SCHROEDER: Thank you.

14 THE COURT: All right.

15 Anything else we can do today?

16 MR. ANDERSON: Judge, Ms. Schroeder and
17 I have talked. We have talked before today about
18 some matters that had come up and it would
19 probably be helpful to just have an additional
20 final pretrial before the next date.

21 THE COURT: Sure, we've got time.

22 Mr. Nelson, it looks like you're in
23 compliance with your Justice Point monitoring,
24 thank you for that.

25 We will go ahead and set it for

A115
4

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 2018

Sheila T. Reiff
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. 2018AP18-CR

Cir. Ct. No. 2014CF1966

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILLIE E. NELSON, JR.,

DEFENDANT-APPELLANT.

**FILED
CRIMINAL DIVISION
AP NOV - 7 2018 AP
JOHN BARRETT
CLERK OF CIRCUIT COURT**

APPEAL from a judgment of the circuit court for Milwaukee County: ELLEN R. BROSTROM, Judge. *Affirmed.*

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

A116

No. 2018AP18-CR

¶1 PER CURIAM. This case involves the sexual assault and trafficking of a child. Willie E. Nelson, Jr., appeals from the amended judgment convicting him of second-degree sexual assault after a four-day jury trial. Nelson contends the trial court erred in allowing the admission of other-acts evidence and excluding any reference to the child victim's pregnancy. We affirm.

¶2 Nelson befriended the victim, then fourteen, in late 2012/early 2013 after she fled the Racine Juvenile Detention Center. He engaged in a sexual relationship with her, gave her drugs and a place to stay, then, she claimed, put her to work as a prostitute in an area of Milwaukee known as "the track." The girl was returned to the detention center but, in early 2014, again absconded and reconnected with Nelson. As before, Nelson had sex with her and prostituted her; she gave him all of the money she made. The State charged him with two counts of trafficking of a child for the purpose of engaging in commercial sex acts and two counts of second-degree sexual assault (intercourse) of a child under sixteen.

¶3 At some point the victim became pregnant. She at first believed, mistakenly, it turned out, that Nelson was the father. Citing Wisconsin's rape shield law, WIS. STAT. § 972.11(2)(b) (2015-16),¹ the State successfully moved pretrial to exclude the fact of the victim's pregnancy and her initial belief that Nelson was the father. The court reasoned that, as Nelson was both prostituting and having sex with the victim, her uncertainty about paternity was not surprising, such that her claim that he fathered the child was not an "untruthful" allegation of sexual assault. See § 972.11(2)(b)3.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless noted.

¶4 The State's second motion in limine sought to introduce other-acts evidence involving an August 2013 incident where Nelson choked and hit the victim.² The court granted that motion as well. It reasoned that the evidence was admissible to show Nelson's motive, intent, or modus operandi because "forced prostitution through violence and intimidation" are basic to a sex-trafficking charge and, given the serious nature of the charges, the probative value of the evidence substantially outweighed any prejudice the evidence might bring.

¶5 The jury found Nelson guilty of one count of second-degree sexual assault but not guilty of the other and not guilty of the two child-trafficking counts. The court sentenced him to eight years' initial confinement (IC) plus nine years' extended supervision (ES).

¶6 Postconviction, Nelson moved for relief on grounds that the trial court erred in excluding the pregnancy evidence and in admitting other-acts evidence regarding the 2013 physical assault. He also contended trial counsel was constitutionally ineffective by failing to inform the court at sentencing that he had testified for the State at an unrelated homicide trial, leading to that defendant's conviction, such that his own sentence should be modified. The court denied the motion as to the evidentiary claims, but granted it in regard to his sentencing request and reduced his IC to seven years. Nelson appeals.

¶7 Nelson renews his claims of evidentiary error on appeal. Both issues implicate the trial court's broad discretion in whether to admit or exclude

² The Honorable Timothy G. Dugan decided the rape shield motion in limine. The Honorable Ellen R. Brostrom decided the other-acts motion in limine, presided over the trial, and sentenced Nelson. The Honorable Jeffrey A. Wagner decided the postconviction motion and modified Nelson's sentence. Nelson challenges only matters that arose at trial.

No. 2018AP18-CR

evidence. *State v. Nelis*, 2007 WI 58, ¶26, 300 Wis. 2d 415, 733 N.W.2d 619. We will not find an erroneous exercise of discretion unless the trial court “applied the wrong legal standard in the exercise of its discretion or ... the facts of record fail to support the [trial] court’s decision.” *State v. Ringer*, 2010 WI 69, ¶24, 326 Wis. 2d 351, 785 N.W.2d 448.

¶8 The trial court excluded the pregnancy and paternity evidence in reliance on the rape shield law, WIS. STAT. § 972.11, which generally prohibits evidence of the complainant’s prior sexual conduct because it has “low probative value and a highly prejudicial effect.” *State v. DeSantis*, 155 Wis. 2d 774, 784-85, 456 N.W.2d 600 (1990). One exception is evidence of prior untruthful allegations of sexual assault. Sec. 972.11(2)(b)3. Before the court admits evidence of prior untruthful allegations, it must determine whether the proffered evidence: (1) fits within § 972.11(2)(b)3., (2) is material to a fact at issue in the case, and (3) is of sufficient probative value to outweigh its inflammatory and prejudicial nature. *DeSantis*, 155 Wis. 2d at 785.

¶9 Nelson claimed he and the victim did not have a sexual relationship and that she prostituted herself, such that the trial court should have permitted the jury to hear about the victim’s pregnancy and her “false” allegation of paternity. For evidence of prior untruthful allegations of sexual assault to be admissible under the WIS. STAT. § 972.11(2)(b)3. exception, the court had to be able to conclude that a reasonable person could infer that the allegations actually were untruthful. *See DeSantis*, 155 Wis. 2d at 788. There is a difference between “untruthful” and “mistaken.” There was ample evidence that Nelson was both having sex with the girl and that she worked as a prostitute. Until DNA evidence proved otherwise, there was no showing that her allegation was untruthful. We

Ail 9

reject Nelson's assertion that her "false" claim that he was the father was essential to undermining her credibility.

¶10 The pregnancy evidence also was not material to a fact at issue in the case. Material evidence is "probative of a fact (or proposition) 'of consequence' to the determination of the action." *State v. Sarfraz*, 2014 WI 78, ¶42, 356 Wis. 2d 460, 477, 851 N.W.2d 235 (citation omitted). Her pregnancy and original belief regarding paternity is immaterial to the ultimate question of whether Nelson sexually assaulted or trafficked her. Even if marginally probative, it was far outweighed by its potential prejudicial value—that promiscuity drove her sexual relationships with Nelson and multiple other men. The three *DeSantis* factors are not met.

¶11 Nelson's other-acts challenge fares no better. Admissibility of other-acts evidence is determined by assessing whether: (1) the evidence is offered for a permissible purpose under WIS. STAT. § 904.04(2); (2) it is relevant under WIS. STAT. § 904.01; and (3) its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the jury, needless delay, or unnecessary repetition under WIS. STAT. § 904.03. *State v. Sullivan*, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998). The probative value of other-acts evidence depends upon the other act's nearness in time, place, and circumstances to the alleged crime. *Whitty v. State*, 34 Wis. 2d 278, 294, 149 N.W.2d 557 (1967). Section 904.04(2) favors admissibility of other-acts evidence unless it is offered to prove the propensity of the defendant to commit similar acts. *See State v. Speer*, 176 Wis. 2d 1101, 1115, 501 N.W.2d 429 (1993).

¶12 Nelson contends the other-acts evidence fails the *Sullivan* analysis and should have been excluded under WIS. STAT. § 904.04(2). He argues that the

No. 2018AP18-CR

battery was but a “one-time occurrence,” was different in time, location, and substance from the sexual assault alleged in the complaint, that he was not arrested for or charged with the battery, that the victim herself claimed she sustained her injuries in an armed robbery, and that admitting the evidence served to mark him as “not only as a sexual trafficker but also as a child beater, a bad person, who routinely hit and choked children.”

¶13 We disagree. The assault occurred after the victim had absconded from a “home pass” from her juvenile detention center. She ran into an acquaintance who took her to Nelson, who then hit and choked her so she would return to “the track.” The physical abuse showed motive and intent and was part of his modus operandi in trafficking a minor like her. Motive and intent are acceptable purposes under WIS. STAT. § 904.04(2). The evidence also was relevant because it demonstrated how he controlled her through fear and intimidation. As the battery occurred in the presence of two other of his prostitutes, it also sent them a cautionary message about the consequences of disobeying him.

¶14 Finally, the probative value of the evidence was not substantially outweighed by unfair prejudice. Nelson complains that the August 13 evidence by itself unfairly portrayed him as a “bad man.” It could not, given the similarity between that incident and the other violence the victim testified to experiencing at his hands. She testified that she felt she could not decline his demands that she work “the track” because he hit her “a lot” and would “put his hands on [her] and threaten to kill [her],” that the August 2013 battery left her with “strangulation marks” on her neck, “a lot of lumps” on her head, and facial bruises, and that, after the attack, she complied with his insistence that she return to “the track.” The battery evidence demonstrated that Nelson’s pattern was to control her through

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6

fear. Further, because the victim was a child, the trial court had greater latitude in exercising its discretion in admitting this evidence. *See State v. Hammer*, 2000 WI 92, ¶23, 236 Wis. 2d 686, 613 N.W.2d 629. We see no misuse of discretion in the evidentiary rulings.

By the Court.—Judgment affirmed.

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

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CERTIFICATION

I HEREBY CERTIFY THAT THE Petition for Review in the matter of State vs. Willie Nelson Jr. 2018 AP 000018 CR conforms to the rules contained in Wis. Stats. Sec. 809.19(b)© for a Petition for Review produced with a proportional font and the length of the Petition is 16 pages. The Brief contains 4992 words.

Dated this 12th day of November, 2018 in Waukesha, Wisconsin.



SS/Michael S. Holzman
Michael S. Holzman
Attorney for Petitioner-Defendant-Appellant

CERTIFICATION

I HEREBY CERTIFY THAT FILED WITH THIS PETITION either as a separate document or filed with this Petition is an Appendix that complies with Wis. Stats. Sec. 809.19(A) and that it contains:

1. A table of contents
2. Relevant trial entries
3. The findings and opinions of the trial court.
4. Portions of the record essential to the issues raised including oral and written rulings or decisions showing the trial court's reasoning regarding these issues.

I hereby certify that if the record is required to be confidential, the portions of the record included in this appendix are reproduced using the first names and last initials instead of full names of persons, specifically, including juveniles and parents of juveniles with a notation that the portions of the record have been reproduced to preserve confidentiality and with appropriate references to the record.

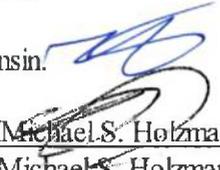
Dated this 12th day of November, 2018 in Waukesha, Wisconsin.


SS/ Michael S. Holzman
Attorney for Petitioner-Defendant-Appellant

CERTIFICATION

I further certify that the text of the electronically filed Petition in this matter is identical to the text of the paper Petition filed with the Wisconsin Supreme Court.

Dated this 12th day of November, 2018 in Waukesha, Wisconsin.


SS/Michael S. Holzman
Michael S. Holzman
Attorney for Petitioner-Defendant-Appellant