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DISTRICT I
2017AP1509 CR

02-13-2018

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TERRELL DAWON ESSEX,

Defendant-Appellant.

ON APPEAL FROM
THE JUDGMENT OF CONVICTION
DATED NOVEMBER 23, 2016
THE HONORABLE JEFFREY WAGNER,
MILWAUKEE COUNTY CIRCUIT COURT, PRESIDING

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

I. THE OTHER ACTS EVIDENCE IN THE FORM OF EVIDENCE OF ANOTHER SHOOTING AND MATCHING BALLISTICS SHOULD NOT HAVE BEEN ADMITTED AS IT WAS IRRELEVANT AND SUBSTANTIALLY PREJUDICIAL.

The state first argues as they did in circuit court that the evidence was admissible as direct evidence. The state argues that this evidence was direct evidence of a link between Essex and the gun that was used to kill Dotson. The state argues that it did not have to prove that Essex possessed the gun in 2015, but that he had the gun in his control as the casings were found in the vehicle in which he was shot. The state does not address the fact that Mr. Essex was a passenger in the vehicle with others, at least two, who were also in that car and had "control" over that firearm. It was not just Mr. Essex.

The state also argues if the evidence of the May 2015 shooting is other-acts evidence, it was admissible under Sullivan. (Response at p. 17). The Appellant disagrees.

Pursuant to *State v. Sullivan*, 216 Wis. 2d 768, 772-773, 576 N.W.2d 30 (1998), there is a three-step test the court must follow when determining the admissibility of

other acts evidence. First, that the evidence fits within one of the exceptions of Wis. Stat. § 904.04(2), second, that the evidence is relevant and third, that the probative value of the evidence is not substantially outweighed by the prejudice to the defendant.

As the state has pointed out, the appellant's argument does center on the third prong, that the probative value is substantially outweighed by the prejudice to Mr. Essex. As was pointed out in the brief-in-chief, the critical issue here is whether or not the introduction of this evidence, that Essex was involved in a shooting months before the shooting of T.D., shocked the jury unduly influenced their decision. The appellant maintains that it did. Mr. Essex was shot in the May, 2015 incident and there was no direct proof that Mr. Essex was the one who fired the firearm and put those bullet casings in his vehicle in May of 2015.

This evidence was unduly prejudicial and because of this, the circuit court abused its discretion when it allowed this evidence to be presented to the jury.

CONCLUSION

The circuit erred when it allowed the other acts evidence to be presented at trial. For this reason, the convictions should be reversed.

DATED this 8th day of February, 2018.

Respectfully submitted,

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LENGTH AND FORM CERTIFICATION

This brief meets the form and length requirements of Rule 809.19(b) and (c), in that it is:

 3 pages long.

Typewritten (10 spaces per inch, non-proportional font, double spaced, 1½ inch margin on the left and 1 inch margin on other three sides.

Dated this 8th day of February, 2018.

/s/Angela C. Kachelski
Angela C. Kachelski

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I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 8th day of February, 2018.

/s/Angela Kachelski
Angela Kachelski

STATEMENT OF SERVICE AND MAILING

Counsel hereby certifies that she has sent an original and nine copies of this Brief to this court via the United States Post Office. Counsel also certifies that she has served three copies of this Brief on the Attorney General's Office via the United States Post Office this 8th day of February, 2018.

/s/ Angela C. Kachelski
Angela C. Kachelski

