

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 29, 2009**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

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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. 2008AP1039-CR**

**Cir. Ct. No. 2006CF206**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GUILLERMO MENDOZA-MEDINA,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dodge County:  
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

Before Higginbotham, P.J., Vergeront and Curry,<sup>1</sup> JJ.

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<sup>1</sup> Circuit Judge George S. Curry is sitting by special assignment pursuant to the Judicial Exchange Program.

¶1 PER CURIAM. Guillermo Mendoza-Medina appeals from the judgment of conviction entered against him. Mendoza-Medina argues that he is entitled to a new trial because he was prevented at trial from presenting a defense, and because the State committed prosecutorial misconduct during closing argument. Because we conclude that the circuit court properly excluded the evidence Mendoza-Medina sought to introduce in his defense, and that Mendoza-Medina waived his right to challenge the prosecutor's statements, we affirm the judgment of the circuit court.

¶2 Mendoza-Medina was convicted after a jury trial of second-degree sexual assault. The victim and Mendoza-Medina were co-workers, and the assault occurred in their workplace. The victim testified that Mendoza-Medina had forced intercourse with her on her desk chair while he restrained her wrists with his hands. At trial, Mendoza-Medina's theory of the defense was that the victim consented to the sex and then fabricated the assault to garner sympathy from various people in her life, including her mother and her employer. Mendoza-Medina alleged that at the time of the assault, the victim was using drugs, was in a custody battle over her children, and was doing poorly at work. Mendoza-Medina argues that these facts establish a motive for the victim to lie about the assault "based on her newfound ability to be a victim."

¶3 During the trial, defense counsel first attempted to pursue this theory of the defense when cross-examining the victim's mother. Counsel asked the victim's mother what her relationship had been with the victim a couple of months before the assault. When the State objected on the grounds of relevance, the court excused the jury, allowed defense counsel to *voir dire* the witness, and heard argument from counsel. During *voir dire*, the victim's mother testified that her daughter had recently had "some drug problems," that as a result of these drug

problems, the mother and others were caring for the victim's children, and that the victim had missed a week of work right before the assault. The court concluded that this testimony was not relevant to the issue of whether Mendoza-Medina had sexually assaulted the victim. The court stated that it did not see a "plausible connection" between the mother's testimony and a motive for the victim to lie about the sexual assault.

¶4 Defense counsel again attempted to pursue this theory when the victim testified, and once again the State objected. Counsel explained to the court that the purpose of this line of questioning was to show that the victim had a motive for lying about the assault. Counsel stated: "[W]hen somebody gets in a victim situation or becomes a victim of a crime, it gives them a great deal of attention, it gives them a great deal of sympathy and, a lot of times, things that might not be going right in their life are resolved, at least in the short term." The circuit court disagreed and sustained the State's objection, but allowed the defense to present evidence that at the time of the assault the victim's children lived with her ex-husband and her mother, that her ex-husband had petitioned for full custody, and that the victim was having problems at work.

¶5 Mendoza-Medina argues that he was denied his right under the Sixth Amendment's confrontation and compulsory process clauses to present evidence. See *State v. Pulizzano*, 155 Wis. 2d 633, 645, 456 N.W.2d 325 (1990). Defendants have a right to have favorable testimony admitted at trial. *Id.* at 645-46. "The right to present evidence is not absolute, however. Confrontation and compulsory process only grant defendants the constitutional right to present relevant evidence not substantially outweighed by its prejudicial effect." *Id.* at 646 (citations omitted). The question of whether a defendant was deprived of his or her "confrontation and compulsory process rights is a question of

‘constitutional fact’ which this court may determine without deference to the lower courts.” *Id.* at 648.

¶6 We conclude, as the circuit court did, that the evidence counsel attempted to introduce was not relevant to the issue at trial, that any relevance it may have had was substantially outweighed by its potentially prejudicial effect, and there is nothing in the Sixth Amendment that requires the circuit court to admit such evidence. Consequently, Mendoza-Medina was not deprived of his constitutional right to present a defense.

¶7 The next issue is whether the State committed prosecutorial misconduct. Mendoza-Medina argues that the State committed prosecutorial misconduct during closing argument. First, he argues that the prosecutor misstated the jury’s role and the burden of proof. Specifically, he argues that the State called the case an important case for the citizens of the county and the State, and told the jury that they were “the bastions for our society of what’s right and what’s proper.” Second, Mendoza-Medina argues that the prosecutor repeatedly vouched for the credibility of the victim. Third, Mendoza-Medina argues that the State commented on Mendoza-Medina’s choice not to testify in his own behalf.

¶8 At the close of trial, and after the jury began deliberating, defense counsel moved for a mistrial based on the first two categories of statements discussed above. The court heard arguments and then called the jury back into the courtroom. The court gave the jury a curative instruction on the “bastions of society” statement, and sent the jury back. After the verdict was returned, the court permitted briefing on the mistrial motion and the defendants added the third ground. The circuit court ultimately denied the motion for a mistrial.

¶9 The State argues that because defense counsel did not object to the various statements at the time the prosecutor made them, Mendoza-Medina waived his right to a review of these statements. We agree.

¶10 In order to preserve an objection to these statements, Mendoza-Medina was obligated to make a contemporaneous objection and move for a mistrial. *See State v. Guzman*, 2001 WI App 54, ¶25, 241 Wis. 2d 310, 624 N.W.2d 717. “The purpose of the contemporaneous objection is to allow the trial court to correct any alleged error with minimal disruption. A timely objection would have afforded the trial court the opportunity to correct any potential error. Therefore, when a timely objection is not made challenging the closing remarks of the prosecutor, a defendant waives his or her right to a review on that issue.” *Id.* (citations omitted). In *Guzman*, the defense did not object during the closing argument. *Id.* Mendoza-Medina’s counsel did not object to the statements during the closing, but waited until after the jury had been sent to deliberate. Because Mendoza-Medina did not make a contemporaneous objection, he waived his right to a review of this issue. For the reasons stated, we affirm the judgment of the circuit court.

*By the Court.*—Judgment affirmed.

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

