

CHAPTER 904

RELEVANCY AND ITS LIMITS

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904.01 Definition of "relevant evidence". "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

History: Sup. Ct. Order, 59 W (2d) R66.

Note: Extensive comments by the Judicial Council Committee and the Federal Advisory Committee are printed with the rules in 59 W (2d). The court did not adopt the comments but ordered them printed with the rules for information purposes.

Introduction of a portion of a bloodstained mattress was both relevant and material by tending to make more probable the prosecution's claim that the victim had been with the defendant and had been molested by him. *Bailey v. State*, 65 W (2d) 331, 222 NW (2d) 871

904.02 Relevant evidence generally admissible; irrelevant evidence inadmissible. All relevant evidence is admissible, except as otherwise provided by the constitutions of the United States and the state of Wisconsin, by statute, by these rules, or by other rules adopted by the supreme court. Evidence which is not relevant is not admissible.

History: Sup. Ct. Order, 59 W (2d) R70.

904.03 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

History: Sup. Ct. Order, 59 W (2d) R73.

Under this section it was within the discretion of the trial court to admit the victim's bloodstained nightgown and to allow it to be sent to the jury room where (a) the nightgown clearly was of probative value, since available photographs failed to show the underside of the garment; (b) the article was not of a nature which would shock the sensibilities of the jury and inflame it to the prejudice of defendant, and (c) no objection was made to the sending of the item as an exhibit to the jury room. *Jones (George Michael) v. State*, 70 W (2d) 41, 233 NW (2d) 430

904.04 Character evidence not admissible to prove conduct; exceptions; other crimes. (1) CHARACTER EVIDENCE GENERALLY. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(a) *Character of accused.* Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(b) *Character of victim.* Except as provided in s. 972.11 (2), evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(c) *Character of witness.* Evidence of the character of a witness, as provided in ss. 906.07, 906.08, and 906.09.

(2) OTHER CRIMES, WRONGS, OR ACTS. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

History: Sup. Ct. Order, 59 W (2d) R75; 1975 c 184.

A defendant claiming self defense can testify as to specific past instances of violence by the victim to show a reasonable apprehension of danger. *McMorris v. State*, 58 W (2d) 144, 205 NW (2d) 559.

A greater latitude of proof as to other like occurrences is allowed in cases involving sex crimes. *Hendrickson v. State*, 61 W (2d) 275, 212 NW (2d) 481.

The determination of whether evidence of prior wrongs or acts should be excluded in the discretion of the court depends upon such factors as the nearness in time, place, and circumstances to the alleged crime as well as the uniqueness of the prior act; hence, the trial court did not abuse its discretion in admitting defendant's threat to rape the 15-year-old made one year prior to the rape for which he was being tried, since the prior act was of sufficient uniqueness so as to out-weigh the passage of time. *Hough v. State*, 70 W (2d) 807, 235 NW (2d) 534.

904.05 Methods of proving character. (1) REPUTATION OR OPINION. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(2) SPECIFIC INSTANCES OF CONDUCT. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

History: Sup Ct Order, 59 W (2d) R80.

Self-defense—prior acts of the victim. 1974 WLR 266

904.06 Habit; routine practice. (1) ADMISSIBILITY. Except as provided in s. 972.11 (2), evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

(2) METHOD OF PROOF. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

History: Sup Ct Order, 59 W (2d) R83; 1975c 184.

904.07 Subsequent remedial measures. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment or proving a violation of s. 101.11.

History: Sup Ct Order, 59 W (2d) R87.

904.08 Compromise and offers to compromise. Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This section does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, proving accord and satisfaction,

novation or release, or proving an effort to compromise or obstruct a criminal investigation or prosecution.

History: Sup Ct Order, 59 W (2d) R90

904.09 Payment of medical and similar expenses. Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

History: Sup Ct Order, 59 W (2d) R93.

904.10 Offer to plead guilty; no contest; withdrawn plea of guilty. Evidence of a plea of guilty, later withdrawn, or a plea of no contest, or of an offer to the court or prosecuting attorney to plead guilty or no contest to the crime charged or any other crime, or in civil forfeiture actions, is not admissible in any civil or criminal proceeding against the person who made the plea or offer or one liable for his conduct. Evidence of statements made in court or to the prosecuting attorney in connection with any of the foregoing pleas or offers is not admissible.

History: Sup Ct Order, 59 W (2d) R94.

904.11 Liability insurance. Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

History: Sup Ct Order, 59 W (2d) R97.

904.12 Statement of injured; admissibility; copies. (1) In actions for damages caused by personal injury, no statement made or writing signed by the injured person within 72 hours of the time the injury happened or accident occurred, shall be received in evidence unless such evidence would be admissible as a present sense impression, excited utterance or a statement of then existing mental, emotional or physical condition as described in s. 908.03 (1), (2) or (3).

(2) Every person who takes a written statement from any injured person or person sustaining damage with respect to any accident or with respect to any injury to person or property, shall, at the time of taking such statement, furnish to the person making such statement, a true, correct and complete copy thereof. Any person taking or having possession of any written statement or a copy of said statement, by any injured person, or by any person claiming damage to property with respect to any accident or with respect to any injury to

person or property, shall, at the request of the person who made such statement or his personal representative, furnish the person who made such statement or his personal representative, a true, honest and complete copy thereof within 20 days after written demand. No written statement by any injured person or any person sustaining damage to property shall be admissible in evidence or otherwise used or referred to in any way or manner whatsoever in any civil action relating to the subject matter thereof, if it

is made to appear that a person having possession of such statement refused, upon the request of the person who made the statement or his personal representatives, to furnish such true, correct and complete copy thereof as herein required.

(3) This section does not apply to any statement taken by any officer having the power to make arrests.

History: Sup. Ct. Order, 59 W (2d) R99.