

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 18, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-1468-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEMETRIUS JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from judgment and order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Demetrius Johnson appeals from a judgment convicting him of delivering heroin, as a party to the crime, and bail jumping. He also appeals from an order denying his motion for postconviction relief. The issues are whether the trial court erroneously excluded evidence during his trial,

and whether it erroneously denied the jury's request to review certain testimony. We affirm.

¶2 During the trial the jury heard testimony describing a drug transaction involving Johnson, his accomplice Hall, an unknown woman, and an undercover police officer. The officer testified that during the transaction she gave Hall \$20 and he gave her a \$10 packet of cocaine. He then asked Johnson for another packet, but Johnson did not have one. Hall then asked Johnson to give the officer \$10 in change. Johnson handed over \$60 to Hall. Hall gave the \$60 to a woman present at the scene and handed the officer's \$20 to Johnson. The woman then gave the officer \$10 in change.

¶3 The officer's testimony included three statements made by Hall to Johnson or to her during the transaction. To counter the inculpatory effect of those statements, counsel for Johnson asked to introduce evidence of a short statement Hall made to police after his arrest in which he said he did not remember what happened to the officer's \$20, and never mentioned Johnson as involved in the transaction. The trial court denied the request.

¶4 During deliberations the jury asked the trial court's permission to review a portion of Johnson's testimony. The trial court responded by informing the jury that obtaining a transcript would be highly inconvenient for court personnel, and would considerably delay the deliberations. The court said that it would nevertheless provide the testimony if the jury renewed its request. The jury did not do so, and subsequently returned a guilty verdict.

¶5 The trial court properly excluded evidence of Hall's post-arrest statement. Johnson argues that the rule of completeness required that the court admit the statement. This rule, codified in WIS. STAT. §§ 901.07 & 906.11(1)

(1997-98),¹ allows the introduction of additional statements if “the statement offered into evidence creates an unfair and misleading impression without the remaining statements.” *State v. Eugenio*, 219 Wis. 2d 391, 411, 579 N.W.2d 642 (1998). However, the rule “should not be viewed as an unbridled opportunity to open the door to otherwise inadmissible evidence. Under the rule of completeness the court has discretion to admit only those statements which are necessary to provide context and prevent distortion. The circuit court must closely scrutinize the proffered additional statements to avert abuse of the rule.” *Id.* at 412. Here the State used the officer’s testimony concerning Hall’s comments during the transaction to prove Johnson participated in that transaction. Johnson sought to use Hall’s subsequent statements not to remedy an unfair and misleading impression from that testimony, but to show that Hall’s earlier statements may not have been made. That is not a recognized use of the rule of completeness.

¶6 Johnson suffered no prejudice from the trial court’s attempt to discourage the jury from pursuing its request for his testimony. The record indicates that by the time the jury received the judges response it had determined that the testimony was no longer necessary. Therefore, that response had no affect on the verdict.

By the Court.—Judgment and order affirmed.

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

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

