

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 22, 2000

Cornelia G. Clark
Acting 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. 99-0307-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TIMOTHY REED,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: LAURENCE C. GRAM, JR., Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

¶1 PER CURIAM. Timothy Reed appeals from a judgment of conviction entered after a jury found him guilty of first-degree intentional

homicide. *See* WIS. STAT. § 940.01 (1997-98).¹ He argues that the trial court erroneously exercised its discretion in admitting hearsay. We affirm.

BACKGROUND

¶2 On March 11, 1998, Reed shot and killed Reginald Hicks. As Hicks was walking down the street towards Reed, Reed pulled out a shotgun. Hicks turned and ran, but Reed chased him down the street and shot him in the back of the head. Hicks fell to the ground, and Reed then shot him in the chest.

¶3 James Bracken had been walking down the street with Hicks when Reed shot Hicks. James Bracken identified Reed as the shooter both from a photo array and from a lineup. James Bracken told the police that he believed Reed wanted to kill Hicks because Hicks had robbed the people in a house where Reed sold drugs. Similarly, James Bracken's cousin, Karen Bracken, who was Hicks's girlfriend, told the police that Hicks had told her that he heard Reed wanted to kill him because of the robbery.

¶4 Reed was charged with first-degree intentional homicide. At trial, both James Bracken and Karen Bracken testified about what they had told the police. The officers who interviewed James Bracken and Karen Bracken also testified about what they were told. The jury found Reed guilty, and the trial court entered judgment accordingly.

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

DISCUSSION

¶5 Reed asserts that the trial court erred in admitting testimony about what James Bracken and Karen Bracken told the police. He asserts that the testimony was hearsay.

¶6 At trial, James Bracken testified, without objection, that he told the police Hicks had robbed the people in a house where Reed sold drugs, and that the robbery was a possible motive for the shooting. Thereafter, Detective Eric Moore testified that he had interviewed James Bracken about the shooting, and James Bracken had told him how Hicks was shot as they were walking down the street together. The prosecutor then asked Detective Moore if James Bracken had told him that the shooting may have been connected to another event, and Reed objected by saying: “This is just bolstering the testimony of Mr. Bracken. This isn’t impeachment.” The trial court overruled the objection, and Detective Moore testified that James Bracken said the shooting was connected to a robbery.

¶7 Karen Bracken testified that, two weeks before Hicks was killed, she heard Reed and Hicks arguing, and Hicks said to Reed, “[W]hatever you [sic] going to do to me, do it now because I ain’t [sic] strapped.” She testified that, after the argument with Reed, Hicks told her that Reed was telling people he was going to kill Hicks.

¶8 Thereafter, Detective Gary Schuster testified that he had interviewed Karen Bracken, and she had told him about the argument between Reed and Hicks. He further testified that Karen Bracken said Hicks told her that he had taken some things during a robbery, and that Reed said he was going to kill Hicks for taking those things. Detective Schuster testified that Karen Bracken had made “a reference to someone being strapped,” and the prosecutor asked him to explain

what she told him. Reed objected, and the trial court overruled the objection in an unrecorded sidebar. The line of questioning continued, and the prosecutor eventually asked Detective Schuster what “Mr. Hicks said according to Miss Bracken.” Reed made an objection without specifying the basis, which the trial court overruled, and Detective Schuster testified, “He had said to Mr. Reed[,] ‘[I]f you’re going to go -- if you’re going to do something, go ahead and do it now because I ain’t [sic] strapped.’” Reed later placed on the record the ground for the objection heard at sidebar, explaining, “I objected to those portions of Detective Schuster’s testimony that simply reiterated, bolster the testimony that Karen Bracken had already given.”

¶9 “[O]bjections to the admissibility of evidence must be made promptly and in terms which inform the circuit court of the exact grounds upon which the objection is based. Moreover, an objection preserves for appeal only the specific grounds stated in the objection.” *State v. Hartman*, 145 Wis. 2d 1, 9, 426 N.W.2d 320, 323 (1988) (citation omitted); *see also* WIS. STAT. RULE 901.03(1)(a) (a party must make a specific and timely objection to the admission of evidence in order to preserve the issue for appeal). “The party raising [an] issue on appeal has the burden of establishing, by reference to the record, that the issue was raised before the circuit court.” *See State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501, 505 (1997). Moreover, hearsay evidence is competent and admissible unless an objection is placed on the record. *See State v. Heredia*, 172 Wis. 2d 479, 482 n.1, 493 N.W.2d 404, 406 n.1 (Ct. App. 1992).

¶10 Reed did not raise hearsay objections in the trial court. Rather, as noted, the stated grounds for his objections were that the testimony elicited did not impeach the prior witnesses, but bolstered their testimony. Reed argues, however,

that, under *State v. Agnello*, 226 Wis. 2d 164, 593 N.W.2d 427 (1999), his objections were sufficient to preserve the hearsay issue. We disagree.

¶11 In *Agnello*, the voluntariness of Agnello's confession was at issue, and the State questioned Agnello regarding the truth of the confession. *See id.*, 226 Wis. 2d at 167–170, 593 N.W.2d at 428–429. Agnello objected, asserting that the answer to the question was not relevant. *See id.*, 226 Wis. 2d at 170, 593 N.W.2d at 429. Although Agnello failed to explain that his relevance objection was based on legal authority holding that the truth of a confession is not relevant to the determination of whether the confession was voluntary, the court held that the relevance objection was sufficient to preserve for appeal the challenge to the prosecutor's line of questioning. *See id.*, 226 Wis. 2d at 173–176, 593 N.W.2d at 431–432. Unlike *Agnello*, Reed completely failed to identify the ground he raises on appeal as the legal ground for his objection in the trial court. He did not merely fail to explain how the challenged testimony constituted hearsay; rather, he failed to assert that the testimony constituted hearsay. We therefore decline to address Reed's hearsay argument.

By the Court.—Judgment affirmed.

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

