

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 16, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0912

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMES KENNEDY,

Defendant-Appellant.

APPEAL from an order of the circuit court for La Crosse County:
PETER G. PAPPAS, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. James Kennedy appeals from a postconviction order denying his motion for a new trial. The issue is whether Kennedy is entitled to a new trial based on newly discovered evidence. We conclude that Kennedy has not established his right to a new trial by clear and convincing evidence. Therefore, we affirm the trial court's order.

The trial court applied the proper legal standards to the relevant facts and reached the correct decision. Therefore, we incorporate the trial court's memorandum decision and affirm its order.¹ See WIS. CT. APP. IOP VI (5)(a) (June 13, 1994) (court of appeals may adopt the trial court's opinion).

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ The trial court incorrectly noted that the victim was fifteen when she testified. Her age was fourteen years, ten months. Kennedy asserts that she was thirteen when she reported the alleged assaults and ten when they allegedly occurred. We conclude that the trial court's factual error is immaterial on the issue of sexual knowledge. Our conclusion may have been different had the victim been age five or six.

AN EXHIBIT HAS BEEN ATTACHED TO THIS
OPINION. THE EXHIBIT CAN BE OBTAINED UNDER SEPARATE
COVER BY CONTACTING THE WISCONSIN COURT OF APPEALS.

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