

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

October 31, 1995

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. 95-0987-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**STEVEN C. WHITE,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Milwaukee County: GEORGE W. GREENE, Judge.<sup>1</sup> *Affirmed.*

WEDEMEYER, P.J.<sup>2</sup> Steven C. White appeals from a judgment entered after a jury convicted him of resisting an officer, contrary to § 946.41(1), STATS. White claims that the State did not disclose what he claims is “exculpatory evidence.” Because the evidence was not exculpatory, this court affirms.

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<sup>1</sup> The Hon. William R. Moser presided over the trial and the Hon. George W. Greene signed the judgment.

<sup>2</sup> This appeal is decided by one judge pursuant to § 752.31(2), STATS.

## I. BACKGROUND

White was arrested on August 4, 1993, on the basis of Patricia A. White's report that White had thrown her to the ground. As White was handcuffed, he made derogatory remarks to the officers and initially refused to step into the police van for transport. When White did enter the van, he kicked Police Officer Michael P. Sarff in the chest. As a result of this conduct, White was charged with resisting an officer.

White made a discovery demand that included a request for any and all exculpatory evidence, including a list of names and addresses of persons "who are witnesses to the events" but "whom the state does not intend to call as witnesses." The State turned over all police reports to White at the final pretrial. The name of David Kant was not a part of that material because Kant denied being present for the arrest.

The case was tried to a jury. Officer Sarff testified that citizens were present during the arrest. Based in part on that testimony, the prosecutor argued in rebuttal closing that White's claim that the officers "physically threw" him into the police van was not credible because these citizen witnesses would have reported such activity. The jury returned a guilty verdict. White now appeals.

## II. DISCUSSION

White argues that the State did not comply with his discovery request when it failed to turn over Kant's name, and that the failure to turn over Kant's name violated his right to receive all exculpatory information that was in the State's possession. He also argues that the prosecutor's reference in closing argument to the presence of citizen witnesses makes Kant's name exculpatory because if Kant was not present, the prosecutor's reference to citizen witnesses was incorrect. This court is not persuaded.

White's first two claims are refuted by the fact that Kant stated he was not present for the arrest. White's discovery request sought names of any

witnesses who would tend to exculpate White from the resisting an officer charge. Kant logically would not have any exculpatory information because he was not present for the arrest. *See State v. Garrity*, 161 Wis.2d 842, 469 N.W.2d 219 (Ct. App. 1991) (exculpatory evidence is evidence that is both favorable to the accused and material to either guilty or punishment).

In other words, Kant could not attest to whether White actually resisted arrest because he was not there to see whether White resisted arrest. Therefore, Kant's name was neither responsive to the discovery request nor was it exculpatory evidence.

Further, White's claim that the rebuttal closing somehow makes Kant's name exculpatory is without merit. The record demonstrates that citizen witnesses were present. The record does not state that the only citizen witness was Kant. Accordingly, this court rejects White's claims and affirms the judgment.

*By the Court.* – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.