

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 23, 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

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No. 96-0379-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

State of Wisconsin,

Plaintiff-Respondent,

v.

Bobby Chambers,

Defendant-Appellant,

Clarence Chambers,

Defendant.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

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

PER CURIAM. Bobby Chambers appeals from a judgment entered after a jury found him guilty of armed robbery as party to a crime contrary to §§ 943.32(1)(b) & (2) and 939.05, STATS. He claims that the trial court

erred: (1) when it admitted evidence of monetary consideration extended to the victim by a third party; (2) when it admitted a statement attributed to Chambers regarding intent to commit a "stickup" in the past; and (3) when it bound Chambers over for trial without sufficient evidence to show probable cause that a felony had been committed. Because admission of the "monetary consideration" evidence was harmless error, because Chambers waived his right to challenge the introduction of the stickup evidence by failing to object at trial, and because he waived his right to challenge the bindover decision by not seeking an interlocutory appeal prior to trial, we affirm the judgment.

I. BACKGROUND

On April 19, 1995, Chambers and his brother Clarence Chambers, drove to Milwaukee from Chicago and went to the home of Eddie and Yvette Martin. Bobby and Clarence went into the bedroom where Eddie was lying on the bed. Clarence asked Bobby to leave. Bobby complied and stood outside the bedroom door. Clarence then threatened to shoot Eddie unless he gave Clarence his money. Eddie turned \$60 over to Clarence who, in turn, gave the money to Bobby. The brothers then left the residence and returned to Chicago.

A short time later, both brothers were charged with armed robbery, party to a crime. This appeal relates only to Bobby's conviction. Bobby was tried before a jury. One of the State's witnesses, Officer William Gorman, testified about conversations he had with Eddie where Eddie reported that he received bribe offers from a woman he believed to be Bobby's girlfriend. The woman offered Eddie \$500 if he would drop the charges. Gorman also testified regarding a \$200 money order that Eddie received from this woman. Eddie did not cash the money order. He turned it over to the police. Bobby objected to the introduction of the money order and Gorman's testimony regarding the money order, citing hearsay rules. The trial court received the money order into evidence over Bobby's objection, but did strike Gorman's testimony that the money order "was supposedly sent to [Bobby] so that he would drop the charges and prosecution of this case."

Eddie and Yvette Martin also testified for the State. Both testified that months before this incident, one of the defendants asked if they knew of someone who the defendants could stick up. Yvette testified that the

defendants actually tried to stickup a friend of the Martins at the Martins' residence. Although Bobby had filed a motion in limine requesting that the stickup evidence be excluded, he failed to make a contemporaneous objection to this evidence during the trial. The jury convicted Bobby. He now appeals.

II. DISCUSSION

A. Evidentiary Issues.

Bobby raises two evidentiary objections: (1) that the money order and Gorman's testimony regarding it should be excluded because it constituted inadmissible hearsay, it was irrelevant and, even if relevant, should be excluded pursuant to § 904.03, STATS.; and (2) that the Martins should not have been allowed to testify regarding the prior stickup because it was inadmissible *Whitty* evidence.¹

An appellate court reviews a trial court's evidentiary rulings according to the erroneous exercise of discretion standard. See *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983); *State v. Alsteen*, 108 Wis.2d 723, 727, 324 N.W.2d 426, 428 (1982). If a trial court applies the proper law to the established facts, we will not find a misuse of discretion if there is any reasonable basis for the trial court's ruling. *Id.* Moreover, even if the trial court erred in allowing the evidence to be introduced, we will not reverse the judgment if the introduction constituted harmless error. *State v. Dyess*, 124 Wis.2d 525, 543, 370 N.W.2d 222, 231 (1985).

We address first the money order and Gorman's testimony regarding it. The State argues that the trial court did not err in admitting this evidence since it was not hearsay because it was not offered to prove the truth of the matter. Rather, it was offered to give a full context to Gorman's actions and to show what the officer did in response to receipt of the money order. We conclude that its introduction was harmless because Eddie also testified that he

¹ See *Whitty v. State*, 34 Wis.2d 278, 149 N.W.2d 557 (1967), *cert. denied*, 390 U.S. 959 (1968).

received phone calls from Bobby's girlfriend, that she offered him money if he would drop the charges, and that he received a money order from her. Bobby did not and does not object to Eddie's testimony. Given this testimony, there is no reasonable possibility of a different result if Gorman's testimony would have been excluded.² *See id.*

We next address Bobby's claim that the stickup evidence should have been excluded. As noted, Bobby filed motions in limine requesting this evidence be excluded. The trial court did not rule on the motions prior to trial. Instead, it took the motions under advisement. When Eddie and Yvette testified regarding the prior stickup at trial, Bobby failed to make a contemporaneous objection to signal the trial court that he still objected to the introduction of this evidence. Accordingly, we conclude that Bobby waived his right to appeal this issue. Section 901.03(1)(a), STATS.; *State v. Gove*, 148 Wis.2d 936, 940-41, 437 N.W.2d 218, 220 (1989) (party must make *timely* objection to preserve issue for appeal). We conclude that Bobby's motion in limine objection was insufficient to satisfy the timely objection requirement because he failed to object when the questionable testimony was elicited at trial.

B. Bindover Decision.

Bobby claimed in his brief-in-chief that the trial court erred in binding him over for trial because the State failed to present sufficient facts at the preliminary hearing to show probable cause. The State replied that Bobby waived this argument by failing to bring an interlocutory appeal prior to trial. *See State v. Webb*, 160 Wis.2d 622, 628, 467 N.W.2d 108, 110, *cert. denied*, 502 U.S. 889 (1991). Bobby concedes in his reply brief that his failure to seek an interlocutory appeal prior to trial prevents him from pursuing this issue in this appeal. We agree the issue was waived and, therefore, decline to address the merits of it.

² Because we have concluded that the introduction of this evidence constituted harmless error, we need not address the additional grounds on which Bobby alleges this evidence was erroneously admitted. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issues need be addressed).

By the Court. – Judgment affirmed.

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