COURT OF APPEALS
DECISION
DATED AND RELEASED

DECEMBER 10, 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. 96-0939-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

EUGENE A. JENSEN,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Marinette County: CHARLES D. HEATH, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Eugene Jensen appeals a judgment convicting him of four counts of sexually assaulting Amanda S., and an order denying his postconviction motion. He argues that the trial court should have suppressed a confession because his lawyer was not present during the questioning. He also argues that the trial court should have allowed him to present the testimony of a psychologist that the confession was unreliable. We reject these arguments and affirm the judgment and order.

Jensen was initially charged with sexually assaulting Ann S., Amanda's older sister. After counsel was appointed to represent him on that charge,[1] Jensen was taken to the hospital for a heart condition. At the hospital, after Jensen waived his ***Miranda*** rights, a sheriff's officer questioned him about Amanda's accusation that he had also had intercourse with her. Jensen responded, "No, not intercourse, contact like Ann." Jensen argues that this statement should be suppressed because the officer violated his Sixth Amendment right to counsel by questioning him without his counsel being present.

The Sixth Amendment right to counsel is "offense specific." ***McNeal v. Wisconsin,*** 501 U.S. 171, 175 (1991). The police are not required to notify counsel before interrogating a prisoner regarding an unrelated, uncharged offense. Because the police have an interest in investigating new or additional crimes after an individual has been formally charged with one crime, statements pertaining to other crimes to which the Sixth Amendment right has not yet attached are admissible at a trial of those offenses. ***Id.*** The jury acquitted Jensen of all charges involving Ann. Therefore, the only question is whether the inculpatory statement was properly admitted regarding Amanda's allegations. Because Jensen had not yet been charged with sexually assaulting Amanda, his Sixth Amendment rights had not yet attached and his statements were admissible.

Jensen argues that the charges relating to Amanda are not "unrelated" as is shown by the fact that the court joined the offenses as to both girls in one trial. The right to counsel does not attach merely because the two crimes bear some relationship. Rather, the two crimes must be "extremely closely related" or "inextricably intertwined" offenses before the right to counsel on one charge will apply to a separate charge. *See* ***United States v. Carpenter,*** 963 F.2d 736, 740-41 (5th Cir. 1992), *cert. denied,* 113 S.Ct. 355 (1992). These crimes involved different victims and were committed at different times over a period of several years. They are not closely related offenses. The fact that the

[1] The State persuasively argues that Jensen never invoked his right to counsel. At his initial appearance, he expressly rejected an offer of counsel. The public defender then apparently appointed himself to represent Jensen. Because we conclude that the police could question Jensen about Amanda's accusations regardless of whether he was represented by counsel on the charges relating to Ann, we need not determine whether the public defender actually represented Jensen regarding Ann's accusations at the time of the interrogation.

two cases have enough in common to warrant a single trial, primarily a question of judicial economy, has no bearing on the admissibility of the inculpatory statement. *See* ***State v. Richer,*** 174 Wis.2d 231, 248, 496 N.W.2d 66, 72 (1993). We conclude that the trial court properly admitted the inculpatory statement into evidence and properly refused to grant separate trials on the unrelated offenses.

Jensen next argues that he should have been allowed to call Dr. Monica Jacobson, a psychologist, to testify that his inculpatory statement was "unreliable" because he suffered from a multiple personality.[2] We disagree. The offer of proof and Dr. Jacobson's postconviction testimony, considered together, do not undermine the reliability of Jensen's statement. Dr. Jacobson did not establish a nexus between her diagnosis of Jensen and the reliability of his inculpatory statement. She testified that the information a multiple personality would give would be "mixed up," and "not logical," and "not neatly assembled," and that Jensen would have an "immature way of thinking." None of these statements establish that Jensen's one sentence statement would be inherently unreliable. On cross-examination, Dr. Jacobson revealed that she had no real basis for her conclusion that Jensen was switching personalities during the hospital interview or had assumed the personality of a child. Dr. Jacobson was not present during the interview and never questioned the officer regarding Jensen's behavior. When confronted with the officer's report that Jensen merely said there was no sexual intercourse, just contact like Ann, she admitted that she could not draw a conclusion from those words and, without learning more, could not reach a conclusion about what happened. Because Dr. Jacobson never created a clear nexus between her diagnosis of Jensen and the reliability of his statement, the trial court properly disallowed her testimony.

By the Court.—Judgment and order affirmed.

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

[2] Jensen also argues that if this court determines that this issue was waived due to a defective offer of proof, he challenges the effectiveness of his trial counsel for making the defective offer of proof. We need not address this issue because we include Dr. Jacobson's posttrial testimony in our analysis. Even if the offer of proof had contained all of the information found in Dr. Jacobson's posttrial testimony, it would not have established that the inculpatory statement was unreliable.