

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 9, 1999

Marilyn L. Graves
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 § 808.10 and RULE 809.62, STATS.

No. 99-0877-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY J. NORDBY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
RAYMOND THUMS, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jeffrey Nordby appeals his convictions for misdemeanor bail jumping, felony bail jumping, armed robbery as party to a crime, and substantial battery as party to a crime, after a jury trial. The same jury acquitted Nordby of attempted first-degree intentional homicide. Nordby and

Timothy Burns attacked a bartender with a baton and knife in a bar at closing time. Before trial, Nordby turned over to the district attorney letters Burns had sent him in jail outlining ways to falsify evidence, suborn perjury, commit perjury, and kill witnesses. The trial court admitted the letters into evidence, and Nordby sought permission to present evidence that he voluntarily turned over the Burns letters to the district attorney. The trial court excluded Nordby's proposed evidence as irrelevant. On appeal, Nordby makes two arguments: (1) how the police got the letters was relevant, helping to show Burns' primary culpability and Nordby's attempt to separate himself from Burns, and thereby Nordby's innocence; and (2) the trial court's ruling violated Nordby's constitutional right to confront witnesses. We reject these arguments and affirm his conviction.

¶2 We have no basis to reverse the trial court's ruling. The trial court made a discretionary decision and properly excluded the evidence if the evidence had no tendency to make any fact of consequence more or less probable. *See State v. Oberlander*, 149 Wis.2d 132, 140-41, 438 N.W.2d 580, 583 (1989). How the police obtained the Burns letters did not meet these standards. Even if we accept Nordby's claim that his surrender of the letters shows an attempt to separate himself from Burns, this is irrelevant to whether he committed the crimes with which he was charged. Nordby's surrender of the letters gives no insight into his acts or mental state at the time of their commission. It is probative of nothing except that Nordby may have been trying to separate himself from Burns after arrest. For the same reason, the trial court's ruling did not breach Nordby's right to confront witnesses. The right of confrontation does not require trial courts to admit irrelevant evidence. *See Rogers v. State*, 93 Wis.2d 682, 692-93, 287 N.W.2d 774, 778 (1980). In short, the trial court properly exercised its evidentiary discretion.

By the Court.—Judgment affirmed.

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

