COURT OF APPEALS
DECISION
DATED AND FILED

November 3, 2010

A. John Voelker
Acting Clerk of Court of Appeals

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* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP2812-CR **Cir. Ct. No. 2008CF415**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER A. WHITE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County: WILBUR W. WARREN, III, Judge. *Affirmed*.

Before Brown, C.J., Neubauer, P.J., and Anderson, J.

¶1 PER CURIAM. Christopher White appeals from a judgment convicting him of attempted first-degree intentional homicide and being an adjudged delinquent in possession of a firearm. On appeal, White argues that the circuit court misused its discretion when it admitted rebuttal evidence at his jury

trial regarding his identity. We conclude that the error, if any, was harmless because there was ample evidence to connect White to and convict him of the crimes. We affirm the judgment.

¶2 In the criminal complaint arising from the shooting of Shaughn Ates, Ates identified White as his assailant and stated that White had the nickname "Payback." At trial, Ates testified that on the night of the shooting, he and others were socializing with White's former girlfriend in her apartment. Ates met White for the first time that night, and White introduced himself as "Payback." Later in the evening, Ates and White argued, and White fled the premises. Subsequently, Ates found White in the apartment's living room loading a shotgun. Ates fled to the street, heard shots and was hit twice. Ates did not see anyone else with a shotgun or argue with anyone else on the night of the shooting.

¶3 White testified that he did not have any disagreements with Ates that night, denied that he had a gun, and denied that he visited his former girlfriend's apartment and shot Ates. White denied having the nickname of "Payback" and denied ever having identified himself to the police as "Payback." On cross-examination, the State asked White if he denied that during a 2007 traffic stop, he identified himself as "Payback." White denied that he did so.

¶4 After the defense rested, the State offered rebuttal evidence from Detective Alfredson. The detective intended to testify that after Ates identified his assailant as "Payback," the detective consulted the Kenosha police department records under the name "Payback" and found a record linking White to that name. The detective knew that other witnesses to the shooting had identified the shooter as "Chris." The detective then created a photo array that included White, and Ates identified White as his assailant. The State argued that the detective was the

custodian of the records he used to connect White to the Ates shooting and that he could testify that White was known as "Payback" in police records. White objected that the detective's testimony would be hearsay and the detective lacked personal knowledge of the evidence. The court limited the rebuttal testimony to his search of the police department records under "Payback" and "Playback" and finding a connection to White.

¶5 The detective testified in rebuttal that on the day after the shooting, he consulted the Kenosha police department's street crimes records. The detective was a member of the street crimes unit at the time he consulted the records. The records' reference to Payback tied back to White. The jury convicted White.

¶6 On appeal, White argues that the circuit court erroneously admitted Alfredson's rebuttal testimony because the testimony was inadmissible hearsay. The State argues inter alia that any error was harmless. Whether an error was harmless presents a question of law that we review de novo. ***State v. Carnemolla***, 229 Wis. 2d 648, 653, 600 N.W.2d 236 (Ct. App. 1999).

¶7 Admitting hearsay evidence can be harmless error if there was no reasonable possibility that the error contributed to White's convictions. ***State v. Jones***, 2002 WI App 196, ¶49, 257 Wis. 2d 319, 651 N.W.2d 305. "[A]n error does not contribute to the verdict if the court concludes that beyond a reasonable doubt a rational jury would have reached the same verdict without the error." ***State v. Harrell***, 2008 WI App 37, ¶37, 308 Wis. 2d 166, 747 N.W.2d 770. The considerations on harmless error include:

> [T]he frequency of the error, the importance of the erroneously admitted evidence, the presence or absence of evidence corroborating or contradicting the erroneously admitted evidence, whether the erroneously admitted evidence duplicates untainted evidence, the nature of the

> defense, the nature of the State's case, and the overall strength of the State's case.

Id. (citation omitted).

¶8 The State argues that even though White denied being known as "Payback," denied arguing with Ates on the evening of the shooting, or shooting him, other witnesses placed White at the scene of the shooting with a shotgun, testified that he and Ates had argued, and that White was known as "Payback." In the State's view, the impact of Alfredson's testimony that White was also known as "Payback" was limited.

¶9 We agree with the State that the rebuttal testimony was harmless. The jury had to assess the credibility of all of the witnesses to the events on the night of the shooting. *See* ***State v. Wilson***, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989). The jury obviously found those witnesses more credible than White's denials. The State's case was strong, and the detective's testimony did not add a great deal to the otherwise strong case.

¶10 Permitting Alfredson's testimony tying "Payback" to White was harmless error, if any error at all. A rational jury would have reached the same verdicts without the supposed error, and there was no reasonable probability that the error, if error it was, contributed to White's convictions.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2007-08).