

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 12, 2011

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. 2010AP1901-CR

Cir. Ct. No. 2008CF5677

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ERNEST ALLEN WILSON,

DEFENDANT-APPELLANT.

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

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Ernest Allen Wilson appeals a judgment convicting him of first-degree reckless homicide, as a party to a crime, and an order denying his motion to modify his sentence. He argues that the circuit court improperly admitted hearsay evidence at trial. We affirm.

¶2 “‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” WIS. STAT. § 908.01(3) (2009-10). Hearsay is not admissible at trial absent statutory exception. WIS. STAT. § 908.02.

¶3 Wilson argues that the following testimony by Detective Erik Villarreal contained inadmissible hearsay:

[The State]: What I want to do is jump ahead until about three and a half days later to November 12th in the year 2008.

Did you go to 734 North 26th Street that day?

[Villarreal]: Yes, sir.

[The State]: Why?

[Villarreal]: During the course of the investigation there, it was learned that one of the suspects stated that he fired shots from a certain location at that scene; and that is why I went back there to try to find casings from the gun.

[The State]: That was John Birt?

[Villarreal]: Yes, sir.

[The State]: Where did Mr. Birt tell you he had fired shots from?

[Wilson]: Objection. Hearsay.

[The State]: It's not for the truth[; it's] to show why he went to that scene.

[The court:] Overruled.

[Villarreal]: He told a fellow detective that he fired shots near the fence line at the rear of 734 North 26.

[The State]: Did you go there?

[Villarreal]: Yes, sir.

[The State]: When you went there, what did you find?

[Villarreal]: I did find three .22 caliber Remington shell casings.

¶4 Detective Villarreal's statement that he went to the scene because he learned during the course of the investigation that co-defendant John Birt had stated that he fired shots from a certain location at that scene was not hearsay because it was not admitted for the truth of the matter asserted in the statement. Detective Villarreal's statement was offered into evidence to show *why* Detective Villarreal went to that location to collect gun casings several days after the shooting; the statement explained the circumstances under which Detective Villarreal found the shell casings three days after the police initially conducted a search of the scene. The statement was not introduced into evidence to show that Birt actually fired the gun from that location. Because Detective Villarreal's statement was not introduced into evidence to show the truth of the matter asserted, the statement was not hearsay. Therefore, we reject the argument that the circuit court improperly admitted hearsay evidence.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

