

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

APRIL 29, 1997

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. 96-2809

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHARLES A. HOFFMAN,

Defendant-Appellant.

APPEAL from an order of the circuit court for Taylor County: GARY L. CARLSON, Judge. *Affirmed.*

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

PER CURIAM. Charles Hoffman appeals a trial court order that denied his § 974.06, STATS., motion challenging his 1991 conviction for misdemeanor resisting an officer and felony endangering safety by conduct regardless of life while armed with a dangerous weapon. Hoffman's § 974.06 postconviction motion alleged that the

prosecution had unconstitutionally withheld exculpatory evidence during his original trial. Specifically, Hoffman alleged that the prosecution had information impeaching two police officers who testified at his trial. This impeachment evidence consisted of misconduct the officers had committed in their official duties unrelated to Hoffman's crimes. Hoffman makes the same argument on appeal. We reject his argument and affirm the trial court order.

Hoffman is entitled to a new trial only if the allegedly withheld evidence was material to his guilt. *See United States v. Bagley*, 473 U.S. 667, 682 (1985); *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Here, Hoffman has identified some misconduct impeachment evidence and claims that the misconduct would have discredited the two police officers. Even if we accept Hoffman's premise that the misconduct was admissible impeachment evidence, he could only have questioned the officers about such material on cross-examination; Hoffman could not introduce extrinsic evidence of such matters. *See* § 906.08(2), STATS.; *see also McClelland v. State*, 84 Wis.2d 145, 159, 267 N.W.2d 843, 849 (1978). Moreover, the evidence would not have affected the outcome of his trial because the prosecution furnished overwhelming evidence of guilt.

Further, the officers' unrelated misconduct concerned their failure to report a game violation by a fellow officer. Such evidence has no more than a marginal effect on the officers' credibility. It was not strongly probative of overall truthfulness. As such, the trial court would have likely barred Hoffman's attempted cross-examination of the officers as a distracting and time consuming sidetrack into a remote and immaterial matter. *See MCCORMICK ON EVIDENCE* § 42, at 83 (2d ed. 1972). Under these circumstances, the misconduct does not furnish a sufficient basis for a collateral attack on the conviction.

By the Court.—Order affirmed.

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

