COURT OF APPEALS
DECISION
DATED AND FILED

September 20, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2123-CR **Cir. Ct. No. 2014CF2456**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOEL MAURICE MCNEAL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed*.

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

¶1 PER CURIAM. Joel Maurice McNeal appeals a judgment of conviction entered after a jury found him guilty of one count of false imprisonment. He seeks a new trial on the ground that the circuit court erred by limiting his opening statement and by sustaining hearsay objections during his

testimony. Alternatively, he claims he is entitled to discretionary reversal in the interest of justice. We reject his contentions and affirm.

Background

¶2 Early on the morning of June 6, 2014, T.B. reported to police that McNeal struck her, threatened her, and forced her to withdraw money from an ATM at a Guaranty Bank in Glendale, Wisconsin. The State charged McNeal with robbery by use of force, kidnapping, and false imprisonment. The matter proceeded to a jury trial.

¶3 During defense counsel's opening statement, the State objected on the ground that defense counsel was testifying. The circuit court sustained the objection, limiting defense counsel's discussion of the anticipated evidence to matters for which counsel also named the person who would give the testimony counsel described.

¶4 Following opening statements, the State called T.B. as its first witness. She said that during the late evening hours of June 5, 2014, she drank seven rum-and-cokes before joining her former boyfriend, McNeal, and accompanying him to a party. There, she consumed three more mixed drinks and smoked crack cocaine. T.B. went on to acknowledge telling McNeal that night that she wanted to rent a hotel room and have sex with him. At approximately 2:00 a.m. on June 6, 2014, she left the party with McNeal, who said he would take her home. Instead, she testified, he demanded that she give him money and drove

her to a Guaranty Bank in the Bayshore Mall. She said that when they arrived she tried to walk away from the car, but McNeal struck her repeatedly, threatened to kill her, threw her back into the car, and eventually forced her to withdraw $200 from the ATM. He then brought her home, where she immediately called the police.

¶5 The State supported T.B.'s testimony with surveillance video recorded by security cameras maintained by Bayshore Mall and Guaranty Bank. The recordings showed T.B and McNeal in a vehicle near an ATM at 2:17 a.m., T.B. walking away after getting out of the car, McNeal hitting her and walking her up to the ATM, then repeatedly pushing her into the car.[1] Additionally, T.B. identified pictures that police took showing her with bruises and other injuries on the morning of June 6, 2014, and she authenticated a bank receipt reflecting that she withdrew $200 from her account at 2:41 a.m. that day.

¶6 After the State rested, McNeal asked for an opportunity to consult with his trial counsel about the decision to testify. When the proceedings reconvened, he took the stand as the sole defense witness.

[1] The record reflects that the circuit court admitted the surveillance videos as trial exhibits but, like all of the trial exhibits, the videos are missing from the appellate record. Our description of their contents is based on T.B.'s trial testimony narrating the videos while they played.

¶7 McNeal told the jury that on June 5, 2014, he received numerous texts from his former girlfriend, T.B., asking him what he was doing and whether he wanted to "hang out." At 12:30 a.m. on June 6, 2014, he met T.B. at her home, and, after driving her to the bank and to the home of an acquaintance who sold her some crack cocaine, he brought her to a party where she consumed the cocaine and drank half a bottle of rum.

¶8 McNeal testified that he left the party with T.B. sometime after 1:30 a.m. on June 6, 2014. He said that as he drove, T.B. urged him to stop at "every gas station.... [S]he wanted to get some money out because she wanted me to go to a hotel with her and get some drugs." Eventually, T.B. persuaded McNeal to take her to the Guaranty Bank but, as they approached, she opened the glove box, discovered his new girlfriend's "feminine stuff ... and had a fit." McNeal went on to testify that after he stopped at the ATM, T.B. jumped out of the car and started walking away. According to McNeal, he pushed her back into the car, telling the jury he "wasn't going to let her just walk in the middle of nowhere because she said she was going to find drugs any way she could." Back in the car, T.B. called him offensive names and McNeal, provoked, struck her several times. Eventually, McNeal returned to the ATM at T.B.'s insistence and she withdrew some money. McNeal then took T.B. home. He said he left her there knowing that she planned to call the police, explaining, "I put my hands on her. I hit her. I knew she was going to call the police. She told me she was going to."

¶9 The State objected to McNeal's testimony at several points on the ground that descriptions of T.B.'s statements constituted inadmissible hearsay. The circuit court sustained the objections but did not strike any of the testimony. During a recess, the circuit court gave trial counsel an opportunity to make a written offer of proof regarding the testimony that McNeal wanted to present and that he believed the circuit court wrongly viewed as hearsay. Upon review of the document, the circuit court ruled that McNeal had successfully put into evidence all of the matters he described in his offer of proof.

¶10 The jury acquitted McNeal of kidnapping and robbery but convicted him of false imprisonment. He appeals, challenging the rulings limiting his opening statement and sustaining the State's hearsay objections to his testimony.

Discussion

¶11 We begin by considering whether McNeal is entitled to relief because the circuit court limited his opening statement. We conclude he is not.

¶12 A circuit court has discretion to limit an attorney's opening statement. *See* ***Beavers v. State***, 63 Wis. 2d 597, 604-05, 217 N.W.2d 307 (1974); *see also* ***State v. Richardson***, 44 Wis. 2d 75, 83, 170 N.W.2d 775 (1969) ("'content of the arguments by counsel to the jury are a matter resting in the discretion of the trial court'") (citation omitted). This aspect of the circuit court's

authority is a bedrock principle of Wisconsin law. *See* ***Baker v. State***, 69 Wis. 32, 41, 33 N.W. 52 (1887).

¶13 Here, the circuit court sustained the State's objection when defense counsel described for the jury the conversation that McNeal and T.B. had in the car on June 6, 2014. Outside of the jury's presence, the circuit court explained that counsel did not identify the person who would provide this testimony. The circuit court then reviewed the options that its ruling allowed McNeal. These included prefacing the descriptions of the promised evidence with statements such as "my client will be testifying, he's going to tell you this," or, alternatively, deferring an opening statement until McNeal decided whether to take the stand.

¶14 The circuit court's ruling constituted a proper and reasonable limit on defense counsel's opening statement. Defense counsel's comments during opening statement '"should not allude to any evidence unless there is good faith and reasonable basis for believing such evidence will be tendered and admitted in evidence.'" ***State v. Moeck***, 2005 WI 57, ¶63, 280 Wis. 2d 277, 695 N.W.2d 783 (citation and footnote omitted). As the State explains, McNeal's opening statement raised the specter of gamesmanship discussed in ***Moeck***:

> The trepidation is that a defense counsel or an accused will use an opening statement to furnish a defense unsupported by evidence. A savvy accused would then invoke his or her right not to testify. This tactic would result in the jury having heard the accused's unchallenged theory of the case, denying the State the opportunity to cross-examine the accused.

See ***id.***, ¶62.

¶15 In ***Moeck***, defense counsel's opening statement included a description of the defendant's version of events, but the defendant ultimately did not testify. ***Id.***, ¶49. The State worried that it could not fully respond in its closing argument to the unsupported opening statement of defense counsel in light of the limits on a prosecutor's ability to comment on the defendant's failure to take the stand. *Cf.* ***id.***, ¶¶53, 56 & n.31 (defendant's right to remain silent violated when during a criminal trial the State comments on defendant's silence). The circuit court therefore declared a mistrial, *see* ***id.***, ¶¶59-60, but the supreme court held that the circuit court erroneously exercised its discretion by failing to consider alternatives that would not have impinged on the defendant's constitutional right to have a trial completed by the original tribunal. *See* ***id.***, ¶¶ 34, 71.

¶16 In this case, precisely as ***Moeck*** requires, the circuit court exercised discretion in a way that eliminated potential obstacles to receiving a valid verdict from the original jury. Recognizing a risk that McNeal might describe his defense in opening statement without later offering supporting evidence, the circuit court sustained an objection to statements that failed to disclose exactly who would testify about a private interaction involving only the victim and McNeal. The circuit court did not, however, prohibit defense counsel from describing the interaction or the theory McNeal would pursue at trial. The circuit court merely required defense counsel to frame the opening statement in a way that did not risk

the integrity of the proceeding by exposing the jury to a defense theory that the evidence might not ultimately support.

¶17 McNeal argues that the circuit court could have allowed trial counsel to complete the opening statement as counsel saw fit and then fashioned a remedy later if McNeal ultimately did not present evidence to support the defense his trial counsel described. The ***Moeck*** court made clear, however, that a circuit court has discretion to determine the appropriate way to avoid a potential mistrial. *See* ***id.***, ¶72. Here, the circuit court might have exercised discretion differently, but that does not demonstrate an erroneous exercise of discretion. *See* ***State v. Prineas*** 2009 WI App 28, ¶34, 316 Wis. 2d 414, 766 N.W.2d 206 ("our inquiry is whether discretion was exercised, not whether it could have been exercised differently").

¶18 We note McNeal's contentions that the circuit court exercised its discretion in a way that deprived McNeal of the right to present a defense and to effective assistance of counsel. We view these contentions as unwarranted hyperbole. To be sure, trial counsel expressed frustration with the circuit court's ruling. Nonetheless, trial counsel well understood that McNeal had options that allowed the jury to hear a complete description of the anticipated defense, notwithstanding that, in counsel's words, he would "have to be boring in [the] opening statement by saying 'my client will testify to this, my client will testify to that.'" There is nothing improper about imposing limits on an advocate that will prevent errors that can be avoided with a modicum of courtroom management.

See ***State v. Payette***, 2008 WI App 106, ¶59, 313 Wis. 2d 39, 756 N.W.2d 423 ("A trial court has considerable latitude in reasonable control of the courtroom and the conduct of parties and of witnesses before it."). In light of the modest adjustment the circuit court asked trial counsel to make to ensure not only a full but also a fair presentation of the case in opening statement, we see no basis for a complaint that McNeal was unable to describe his defense effectively to the jury.

¶19 In sum, we are satisfied that the circuit court did not err by sustaining the State's objection to McNeal's opening statement. Concerns about the integrity of the proceedings led the circuit court to impose a limitation that allowed McNeal to set the stage for the jury so long as he made clear how he would ultimately present the evidence he described. The court properly exercised discretion here.

¶20 We next consider whether the circuit court erroneously sustained hearsay objections to McNeal's testimony recounting T.B.'s statements on the night of June 6, 2014. We review evidentiary rulings under a deferential standard to determine whether the circuit court properly exercised its discretion, and we search the record for reasons to sustain a circuit court's discretionary decision. *See* ***State v. Manuel***, 2005 WI 75, ¶24, 281 Wis. 2d 554, 697 N.W.2d 811.

¶21 Pursuant to WIS. STAT. § 908.01(3) (2013-14),[2] "'[h]earsay' 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." McNeal believes the circuit court erred by sustaining hearsay objections to his testimony about the statements T.B. made in the car on June 6, 2014, specifically, that she: (1) asked him to stop the car to allow her to get money to buy drugs and rent a hotel room where they could have sex; (2) said she was "going to get some drugs" when she tried to jump out of the car; and (3) threatened to call the police.

¶22 McNeal's principal contention is that the testimony describing T.B.'s out-of-court statements simply was not hearsay because McNeal offered the testimony to show "why he felt the need to both return [T.B.] to the car ... and thereafter keep her inside the car," not to prove the truth of her assertions that she wanted to buy drugs, go to a hotel, and have sex. In support, he cites ***State v. Wilson***, 160 Wis. 2d 774, 779, 467 N.W.2d 130 (Ct. App. 1991): "[w]here a declarant's statement is offered for the fact that it was said, rather than for the truth of its content, it is not hearsay." ***Id.*** Further, he argues, "'when it is proved that D made a statement to X, with the purpose of showing the probable state of mind induced in X ... the evidence is not subject to attack as hearsay.'" *See* ***id.*** (citation and brackets omitted).

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶23 The State does not dispute McNeal's application of the hearsay rule or the relevance of McNeal's cited authority. Instead the State contends: (1) the circuit court properly exercised discretion in sustaining objections to the testimony describing T.B.'s statements because, as McNeal's offer of proof showed, the testimony was cumulative; and (2) any error was harmless.[3] We agree.[4]

¶24 We turn first to whether the evidence was cumulative. McNeal made a written offer of proof regarding T.B.'s out-of-court statements, and the circuit court accepted the offer of proof as trial exhibit sixteen. The circuit court

[3] In light of the State's position, we need not consider McNeal's alternative basis for admitting T.B.'s out-of-court statements, namely, that they fit within the exception to the hearsay rule set forth in WIS. STAT. § 908.03(3) for a declarant's "then existing state of mind, emotion, sensation or physical condition." *Cf.* ***State v. Huntington***, 216 Wis. 2d 671, 681-82, 575 N.W.2d 268 (1998) (exceptions to hearsay rule permit admission of certain categories of reliable hearsay). Because the State tacitly concedes that T.B.'s out-of-court statements were not hearsay, we will not examine whether those statements nonetheless fit within an exception to the hearsay rule. *See* ***State v. Hughes***, 2011 WI App 87, ¶14, 334 Wis. 2d 445, 799 N.W.2d 504 (we decide cases on narrowest possible ground).

[4] As a third reason to uphold the circuit court's evidentiary rulings, the State suggests the circuit court properly exercised control over the courtroom by sustaining the prosecutor's objection when McNeal gave a nonresponsive answer to his lawyer's question. We are not persuaded. Although the prosecutor asserted in chambers that "nonresponsive answer" was an alternative basis for the State's objections to some of McNeal's direct testimony, the objection that an answer is not responsive belongs to the questioner and can be made only by the party conducting the examination. *See* RALPH ADAM FINE, FINE'S WISCONSIN EVIDENCE: A QUICK GUIDE TO COURTROOM EVIDENCE § 901.03 (2nd ed. 2008); DANIEL D. BLINKA, WISCONSIN EVIDENCE § 611.1 & n.15 (3rd ed. 2008). Moreover, although the circuit court said it agreed with the prosecutor that McNeal's testimony was not responsive to his trial counsel's questions, the circuit court went on to explain that the questions were improper and the answers inadmissible. Specifically, the circuit court ruled: "Counsel has asked the question [']and then what did she say[']at least four times. [']Then what did she say[']is not an [acceptable] question. You, sir, may not say what other people say.... You may not say what she says to you. It couldn't be clearer."

then made a finding that "every single one of [the items listed on the offer of proof] is in the record already."

¶25 We have no basis to disturb the circuit court's finding. When a party claims the circuit court wrongly prevented admission of evidence, a proper record that includes an offer of proof is essential to later appellate review. *See* ***State v. Jackson***, 2014 WI 4, ¶¶71, 78-79, 352 Wis. 2d 249, 841 N.W.2d 791. Trial exhibit sixteen, however, like all of the trial exhibits, is missing from the appellate record.

¶26 "It is the appellant's responsibility to ensure completion of the appellate record." ***State v. McAttee***, 2001 WI App 262, ¶5 n.1, 248 Wis. 2d 865, 637 N.W.2d 774. McNeal did not move to supplement the appellate record with trial exhibit sixteen although the rules of appellate procedure permit such a motion.[5] *See* WIS. STAT. RULE 809.15(3). '"[W]hen an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling.'" ***McAttee***, 248 Wis. 2d 865, ¶5 n.1 (citation omitted). We therefore assume that the offer of proof

5 We have no reason to believe that trial exhibit sixteen is unavailable, but if it is, we observe that when a record item is unavailable for appellate review, Wisconsin law recognizes a procedure to reconstruct the missing portions of the record. *See* ***State v. DeLeon***, 127 Wis. 2d 74, 80-82, 377 N.W.2d 635 (Ct. App. 1985) (describing procedure when transcript is missing). McNeal did not invoke that procedure.

supports the circuit court's finding that all of the evidence McNeal wanted to offer was in fact already in the record.

¶27 A circuit court has discretion to exclude evidence that is merely cumulative to other evidence on the same point. *See* WIS. STAT. § 904.03; ***State v. Speese***, 199 Wis. 2d 597, 605, 545 N.W.2d 510 (1996). Here, the circuit court found that the testimony McNeal described in his offer of proof would have been cumulative. Although the circuit court ruled that the proffered evidence was inadmissible hearsay, we may sustain a circuit court's discretionary evidentiary ruling on a basis different from that invoked by the circuit court if the record supports such an alternate basis. *See* ***State v. Smith***, 2002 WI App 118, ¶16, 254 Wis. 2d 654, 648 N.W.2d 15. Because the record supports the finding that the proposed evidence was cumulative, we may rely on that finding to uphold the circuit court's rulings sustaining hearsay objections to further testimony about facts already presented to the jury.

¶28 To ensure confidence in the outcome of McNeal's trial, however, we also consider the State's argument that any error in sustaining the hearsay objections was harmless here. "The erroneous exclusion of testimony is subject to the harmless error rule." ***State v. Hunt***, 2014 WI 102, ¶26, 360 Wis. 2d 576, 851 N.W.2d 434. To show that an error was harmless, "the party that benefitted from the error—here, the State—must prove 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" ***Id.***, (citations omitted).

¶29 When conducting a harmless error analysis, we examine: "the importance of the erroneously admitted or excluded evidence; the presence or absence of evidence corroborating or contradicting the erroneously admitted or excluded evidence; the nature of the defense; the nature of the State's case; and the overall strength of the State's case." ***Id.***, ¶27. We may consider the first two of those factors in tandem. *See* ***id.***, ¶30 (stating that, when considering importance of evidence erroneously admitted or excluded, the presence or absence of corroborating or contradicting evidence particularly informs the analysis).

¶30 McNeal says the circuit court wrongly prevented him from offering important testimony: (1) "about T.B.'s desire to stop at an ATM to withdraw money to buy more drugs [and T.B.'s] statements in the car as [T.B.] was trying to jump out"; (2) "that T.B. became irate when she found out he had a new girlfriend, was driving his new girlfriend's car and that was why he refused to have sex with her"; (3) about "how [T.B.] threatened to call the police, yelled and hurled insults at him after she found out he was dating someone new"; and (4) that T.B. "was severely impaired due to ingesting liquor and crack cocaine." The record shows that the jury heard all of this evidence.

¶31 *Testimony about T.B.'s desire to stop at an ATM to withdraw money to buy more drugs.* McNeil testified that when he offered to take T.B. home, she objected and "said she wanted to get more drugs. She wanted me to take her back and get more drugs. And I said no." The State did not object. McNeil went on to

say that while he drove, "she asked me to stop right there at the gas station on Fond du Lac and Townsend so she could go to the ATM. And I told her, I'm not, I'm not stopping there because I knew what she wanted to get money for." The State did not object. McNeil testified that "every gas station we passed she asked me to stop there because she wanted to get some money out because she wanted me to get a hotel with her and get some drugs and get a hotel. All the way I kept telling her no." The circuit court sustained a hearsay objection at that point, but the testimony was not stricken. Nothing prevented the jury from considering those latter statements. *See* ***Caccitolo v. State***, 69 Wis. 2d 102, 114, 230 N.W.2d 139 (1975) (absent motion to strike and instruction to disregard, evidence offered subject to objection comes before the jury).[6] Additionally, on cross-examination, the State questioned McNeal about his direct testimony that T.B." wanted to go buy more drugs and go to a hotel." He confirmed that T.B. wanted "both."

¶32 *Testimony describing the statements T.B. made when she jumped out of the car.* McNeil testified that when he and T.B. pulled up to the ATM, "she jumped out of the car and start[ed] walking." He testified that he followed her "because [he] wasn't going to let her just walk in the middle of nowhere because she said she was going to find drugs any way she could." McNeal said he pulled

[6] McNeal does not direct our attention to any point in the record where the circuit court instructed the jury to disregard evidence that had not been stricken. It is not our role to sift the record for material that will assist an appellant. *See* ***State v. Linton***, 2010 WI App 129, ¶19, 329 Wis. 2d 687, 791 N.W.2d 222. We observe, however, that our review of the record revealed no such instruction.

her back to the ATM because "she's like you're not going home. We're going to get a hotel." McNeil completed this testimony without interruption or objection.

¶33 *Testimony that T.B. was "irate" about McNeal's new girlfriend.* McNeal testified that, just before he and T.B. arrived at the bank, T.B. "'opened the glove box and [saw] all of my girlfriend's feminine stuff and sunglasses and she had a fit. She blew up and started saying ['] I knew this wasn't your friend's car, I knew this was your bitch's car.['] And I'm trying to calm her down and she just kept letting me have it." McNeal went on to say that when he drove up to the ATM, "[s]he still kept going off and saying ['] I knew you had another bitch. That's why you don't want to get a hotel. That's why you taking me home because you have to hurry up and get home.[']" McNeal gave all of the foregoing testimony without objection or interruption.

¶34 *Testimony that T.B. called McNeal names and screamed obscenities.* McNeil testified that after he wrestled T.B. back into the car "she started cussing me out. She started calling me nigger and calling me a punk ass nigger, a fag nigger." Again, McNeal completed this portion of his testimony without interruption or objection and moved on to describe hitting T.B.

¶35 *Testimony that T.B. threatened to call the police.* McNeal responded to a question about why he went to the Guaranty Bank ATM by saying "because she at first was saying I'm going to call the police because you hit me." The State objected but did not move to strike the testimony. Moreover, during cross

examination, McNeal told the State: "I knew she was going to call the police. She told me she was going to."

¶36 *Testimony that T.B. was "severely impaired due to ingesting liquor and cocaine."* McNeal testified that when he first saw T.B. early on June 6, 2014, "she was already at the point of being drunk" and had consumed seven "tall cups" of alcohol. He went on to testify that when he and T.B. were at the party, he saw T.B. drink half a bottle of rum and smoke crack cocaine over a period of about an hour. He opined that "she was pretty high and pretty drunk." McNeal gave this testimony without interruption or objection. He subsequently told the jury that he took the actions he did because he would not let someone "walk out as drunk and high as she was.... I was going to make sure I took her home."

¶37 The record is clear that McNeal could and did tell the jury his version of the events that took place on June 6, 2014, including the portions that involved T.B.'s alleged out-of-court statements.[7] This alone largely dictates a conclusion that any error the circuit court may have made in excluding further

[7] McNeil tells us that, in addition to the testimony that we have discussed above, the circuit court's hearsay rulings prevented him from testifying that T.B. "had a history of drug use that led to numerous unsafe situations in the past." McNeal, however, does not point to anything in the record relevant to this contention. For example, he does not identify a point at which trial counsel asked McNeal if he had any knowledge about "T.B.'s history of drug use," or, perhaps more importantly, any hearsay objections to such testimony. We therefore reject as unsupported and inadequately briefed any claim that the hearsay rulings at issue in this appeal somehow prohibited McNeal from testifying about his knowledge of T.B.'s history of drug use. *Cf.* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

corroborating testimony describing those statements is harmless beyond any reasonable doubt. *See* ***State v. Everett***, 231 Wis. 2d 616, 631, 605 N.W.2d 633 (Ct. App. 1999) (ruling erroneously excluding evidence is harmless where "other evidence about [the] issue, which the jury did hear, functionally conveyed the same theory of defense to the jury."). Pursuant to ***Hunt***, however, we also consider the nature of the defense case and the nature and overall strength of the State's case.

¶38 The defense theory was that T.B. was heavily intoxicated and under the influence of cocaine on June 6, 2014, when she told McNeal that she wanted to get money from an ATM to purchase drugs and go to a hotel for sex. Because McNeal rejected her proposals, she tried to get out of the car to hunt for drugs on foot late at night "in the middle of nowhere," and McNeal restrained her for her own protection. When T.B. realized that McNeal had a new girlfriend, she became enraged and vengeful. McNeal asked the jury to reject as incredible T.B.'s testimony accusing him of robbery, kidnapping, and false imprisonment because her recollection was distorted by her consumption of cocaine and a staggering amount of rum, and because her jealousy motivated her to testify falsely. The jury heard this theory and accepted it in part, agreeing that McNeal did not rob or kidnap T.B.

¶39 The State, for its part, urged the jury to doubt McNeal's credibility. The State showed that, during a custodial interview with the police on June 17,

2014, McNeal told one detective that he "smacked the hell out of [T.B.]," but then suggested to the police that the injuries T.B. displayed on June 6, 2014, might have been self-inflicted in order to get him into trouble. The State similarly showed that McNeal admitted to police in his custodial statement that he "may have been slightly intoxicated" at the time he reached the ATM.

¶40 Substantively, to obtain a conviction for false imprisonment the State was required to prove: "(1) confinement or restraint of a named person, (2) intentionally, (3) without the person's consent, (4) knowing the confinement or restraint is without the person's consent, (5) without lawful authority, and (6) with knowledge of the lack of authority." *See* ***State v. Teynor***, 141 Wis. 2d 187, 203, 414 N.W.2d 76 (Ct. App. 1987); *see also* WIS JI—CRIMINAL 1275. The State presented substantial and compelling evidence satisfying these elements: not only did T.B. testify about the incident, but, in addition, the jury could see for itself that McNeal pushed T.B. towards the ATM, hit her, and forced her back into the car when she tried to get away. Moreover, McNeal never denied that he intentionally restrained T.B. against her will; rather, he said he took that action so she would not wander the streets alone late at night while under the influence of alcohol and cocaine. Accordingly, even if the circuit court erred by sustaining hearsay objections to testimony that might have repeated some of his contentions, we are satisfied beyond a reasonable doubt that the error did not contribute to the guilty verdict that the jury reached on the charge of false imprisonment.

¶41 Last, we reject McNeal's claim that, because the circuit court sustained hearsay objections to some of his testimony, he is entitled to reversal of his conviction in the interest of justice pursuant to WIS. STAT. § 752.35. As the supreme court has repeatedly instructed, "the discretionary reversal statute should be used only in *exceptional* cases." ***State v. McKellips***, 2016 WI 51, ¶52, 369 Wis. 2d 437, 881 N.W.2d 258. Discretionary reversals based on evidentiary rulings may be appropriate "when 'the jury was erroneously denied the opportunity' to hear important, relevant evidence while other evidence was erroneously admitted." ***State v. Burns***, 2011 WI 22, ¶45, 332 Wis. 2d 730, 798 N.W.2d 166 (citation omitted). Here, McNeal does not attempt to satisfy the second half of the equation: he makes no argument that any evidence in this case was improperly admitted.

¶42 Moreover, as our discussion throughout this opinion reflects, McNeal fails to persuade us that the jury was denied the opportunity to hear the evidence he wanted to present. To the contrary, he could and did tell the story he wanted the jury to hear. The record thus conclusively shows that this is not the exceptional case warranting the exercise of our discretionary power of reversal.

By the Court.—Judgment affirmed.

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