

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 8, 2008

David R. Schanker
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. 2007AP664-CR

Cir. Ct. No. 2005CF2152

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CORTEZ P. ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. A jury convicted Cortez P. Robinson of first-degree intentional homicide, armed robbery with use of force, and attempted first-degree intentional homicide, all as a party to the crimes. On appeal, Robinson argues that the circuit court erred when it admitted out-of-court statements made to

a third party by his accomplice, Aldric Robinson. Because we conclude that the appellant failed to preserve on the record his specific objections to admission of the statements and the circuit court's ruling on his objection, he waived the right to challenge the ruling on appeal. We therefore affirm the judgment of conviction.

¶2 Jovashaun Ward owned a white Monte Carlo automobile. Ward was paralyzed from the waist down, and Antoine Sanders, Ward's cousin, was carrying him to the car. Sanders told police that they were approached by three men unknown to him, and that the men started shooting. Sanders told police that he "dropped" Ward and started to run away. He was shot in the back in the right shoulder. Sanders subsequently identified Cortez Robinson as the person armed with a semi-automatic handgun. Benjamin Chestnut was killed in the shooting. Robinson and the other two men took Ward's Monte Carlo, which was recovered after it had been stripped of its wheels and electronics. Police also recovered a black Cadillac registered to Robinson's brother, Cantrell Robinson. In the Cadillac, they recovered the remote keyless starter for Ward's Monte Carlo. Police arrested Cortez and Cantrell Robinson, and their cousin, Aldric Robinson.

¶3 At Cortez Robinson's trial, the State called as a witness Shara Leverston, Aldric Robinson's girlfriend. When Leverston gave answers that contradicted her earlier statements, the State attempted to impeach her testimony with those statements. In one of her statements, Leverston gave police information that Aldric Robinson had told her about the crimes. Defense counsel requested a sidebar, which was granted. After the sidebar, defense counsel stated that he had asked for the sidebar because he

was concerned where [the prosecutor] was going to go with this witness because there is stuff in her statement alleged to have been said by [his] client that was said to other people or whatever. Basically, I was objecting to her

testifying to anything other than the factual observations [Leverston] made that morning, and we discussed that.

I think the court indicated that [the prosecutor] could go into that part, but not the rest. He is now asking about the—what Aldric said or did to implicate himself, and I objected to that. I think you indicated that [the prosecutor] could go into that part, as long [as] it doesn't talk about my client.

The prosecutor then explained his reasons for attempting to impeach Leverston through her police statement, but agreed that he would “stay away” from asking any questions about Leverston’s statement that would implicate Cortez Robinson.

¶4 On appeal, Robinson argues that the circuit court violated his right to confront the witnesses against him when it allowed Leverston to testify regarding statements Aldric Robinson had made to her. Robinson maintains that those statements indirectly implicated him. In addition, he argues that Leverston’s testimony regarding Aldric Robinson’s statement should have been disallowed as hearsay. We agree with the State, however, that because these objections were never specified on the record to the trial court, they were waived.

¶5 WISCONSIN STAT. § 901.03(1)(a) (2005–06)¹ provides that “[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected” and, if the ruling admits evidence, “a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context” This rule forms the basis for sound trial practice, which requires that objections must be

¹ All references to the Wisconsin Statutes are to the 2005–06 version unless otherwise noted.

made promptly and “in terms which apprise the court of the exact grounds upon which the objection is based.” *State v. Wedgeworth*, 100 Wis. 2d 514, 528, 302 N.W.2d 810 (1981) (citation omitted). Here, Robinson’s counsel requested a sidebar seeking limits on the prosecution’s questioning of Leverston. After the sidebar, which was not recorded, defense counsel and the prosecutor summarized for the record the substance of the discussion. As the State notes in its brief, Robinson’s suggestion on appeal that “any statement Aldric made to Leverston was off-limits” is unsupported by the summary in the record. The summary of the sidebar is ambiguous on this point, and it suggests that the parties agreed Aldric Robinson’s statements were admissible to the extent that they did not implicate Cortez Robinson directly.²

¶6 The risks of unreported sidebars have long been known to and acknowledged by this court due to the often unreliable and ambiguous summaries of those conferences that are then placed in the record:

[S]idebar conferences and after-the-fact summations of those conferences are commonplace in some courtrooms. We caution, however, that appellate review is better served by counsel following the [WIS. STAT. § 901.03(1)(a)] procedure of stating objections and grounds on the record. If a matter is significant enough to invite appellate review, it is too important to subject to a remote summation procedure.

State v. Mainiero, 189 Wis. 2d 80, 95 n.3, 525 N.W.2d 304 (Ct. App. 1994). In this appeal, the “remote summation procedure” has resulted in, as the State puts it, “ambiguity and uncertainty.” We do not know what happened in this case because the record does not disclose what transpired at the sidebar conference. “Counsel

² We need not address directly the question of whether any of Aldric Robinson’s statements to Leverston were admissible due to Robinson’s failure to object on the record.

who rely on unrecorded sidebar conferences do so at their own peril.” *Wedgeworth*, 100 Wis. 2d at 528. On the basis of this record, we conclude that counsel’s objection failed to state any grounds with particularity and that such failure amounted to a waiver of the objection. *See id.*; *see also State v. Guzman*, 2001 WI App 54, ¶25, 241 Wis. 2d 310, 624 N.W.2d 717 (When a timely objection is not made challenging the closing remarks of the prosecutor, a defendant waives his or her right to a review on that issue.).

By the Court.—Judgment affirmed.

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

