

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 26, 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. 2010AP1567-CR

Cir. Ct. No. 2007CF1313

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEANGELO J. JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed.*

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

¶1 PER CURIAM. Deangelo J. Johnson appeals from a judgment of conviction entered on a jury's verdict, on one count of first-degree intentional homicide. He contends there is insufficient evidence to support the verdict. We reject this argument and affirm.

¶2 Johnson was charged in the shooting death of Crystal Butler. On appeal, he contends insufficient evidence supports the verdict because no witness observed any shooting or any altercation between Johnson and Butler; Johnson's brother, Jacorrey, who originally told police Johnson made incriminating statements, denied the same when he testified; no weapon was recovered and the caliber of the weapon used was common; and Johnson never gave an inculpatory statement to police.

¶3 When we review the sufficiency of evidence supporting a conviction, we may not substitute our judgment for the jury's "unless the evidence, viewed most favorably to the state and conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our concern is with the evidence actually presented, not with evidence not presented.

¶4 The standard of review is the same whether the evidence presented at trial is direct or circumstantial. *Id.* at 503. Indeed, "circumstantial evidence is oftentimes stronger and more satisfactory than direct evidence." *Id.* at 501-502. We do not inquire whether this court is convinced of the defendant's guilt beyond a reasonable doubt, but only whether the fact-finder could be so convinced. *See id.* at 503-04. The following evidence, adduced at trial, supports the verdict.

¶5 Butler was found dead in her apartment by her mother at 11:45 p.m. on March 5, 2007. There was no sign of forced entry; the front door was locked and the back door was unlocked. Her mother had seen Butler and Johnson in the apartment at 11 a.m. that morning. That was not unusual because Butler and Johnson lived together, although more as roommates after their relationship had

soured. Johnson had been sending multiple text messages to Butler, believing she was romantically involved with someone else. The texts stopped the day Butler was killed.

¶6 Butler's son knocked on the neighbor's door after school, at 2:45 p.m., because no one answered at home. Butler's stepsister spoke to her by phone between 12:30 and 1 p.m.; during the conversation, Johnson grabbed the phone from Butler and demanded to know who was speaking. When the stepsister called back between 2:30 and 3 p.m., she received no answer.

¶7 Around 1 p.m., Johnson called his brother, Jacorrey, and asked to be picked up. Jacorrey obliged, eventually dropping Johnson off in Mississippi. According to Jacorrey's statement to police, Johnson said, "I fucked up" and told Jacorrey, "I shot Crystal." When he testified, Jacorrey denied Johnson said these things to him.¹ Johnson's boss testified that he failed to show up for work the following week, although Johnson asserts that the absence was prearranged.

¶8 Jacorrey also told police that Johnson admitted shooting Crystal four times; this number is accurate but had never been publicly disclosed by police. The firearm used was a .380 caliber weapon. One manufacturer of weapons of that caliber is Grendel; Johnson owned a Grendel. Although the gun was never found, an empty pistol case and a box of .380-caliber ammunition were recovered at the scene. Thirty rounds of ammunition were missing from the box.

¹ The jury was free to determine that Jacorrey's statements to police were the truth but his testimony was not. See *Nabbefeld v. State*, 83 Wis. 2d 515, 529, 266 N.W.2d 292 (1978).

¶9 From the evidence, the jury could more than reasonably conclude Johnson shot and killed Butler, possibly over a failed romance, then fled to avoid capture with the aid of his brother, in whom he confided. The lack of certain evidence Johnson thinks should have been presented is not fatal to the conviction because the evidence actually presented is sufficient.

By the Court.—Judgment affirmed.

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

