



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

October 17, 2013

To:

Hon. James P. Czajkowski
Circuit Court Judge
220 N. Beaumont Street
Prairie du Chien, WI 53821

Lisa A. Riniker
District Attorney
130 W. Maple Street
Lancaster, WI 53813

Tina McDonald
Clerk of Circuit Court
Grant County Courthouse
130 W. Maple St.
Lancaster, WI 53813

Rebecca J. Vahle
Administrative Law Judge
State of WI/Division of Hearings and
Appeals
P O Box 7875
5005 University Avenue, Suite 201
Madison, WI 53707-7875

Daniel J. O'Brien
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Joseph N. Ehmann
First Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

You are hereby notified that the Court has entered the following opinion and order:

2012AP490-CR

State of Wisconsin v. Milton Hill, Jr. (L.C. # 2010CF173)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Milton Hill appeals a judgment convicting him, after a jury trial, of one count of delivery of cocaine as a party to a crime. WIS. STAT. §§ 961.41(1)(cm)1g, 939.05 (2011-12).¹ On appeal, Hill argues that the circuit court erred when it limited the content of a police officer's testimony. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Hill was arrested after a controlled drug buy in which a confidential informant, David Mahr, agreed to purchase cocaine from Hill. Mahr was picked up at his home by police officer Brian Bilse and another officer. Bilse gave Mahr one hundred dollars, outfitted Mahr with a recording device, and conducted a pat-down search of Mahr. The search did not produce any contraband. The officers then dropped Mahr off near Hill's house and Mahr went in through a side door. Mahr testified that Hill took the money from him and that Hill's girlfriend gave him a "rock" of cocaine. Mahr then met Bilse and the other officer at a nearby store and turned over the cocaine, which was unpackaged.

Prior to trial, Hill filed a motion in limine that sought leave of the court to elicit testimony from Bilse at trial relating to a controlled drug buy in the past that Bilse had coordinated with an informant named Grady Corcoran. According to the motion and the arguments of Hill's counsel, Corcoran concealed a piece of cocaine in his mouth during a search conducted by Bilse and then lied about performing a drug transaction. After a hearing, the circuit court denied Hill's request to elicit the testimony about Corcoran, but indicated that the defense could renew the motion at a later date.

At the outset of trial, Hill once again moved for leave of the court to elicit testimony from Bilse on the Corcoran matter. The circuit court ruled that Hill would be permitted to question Bilse about whether it was possible for a confidential informant to hide drugs on his or her person during a search. The court further ruled that, if Bilse denied that hiding the drugs was possible, then Hill would be allowed to explore the Corcoran matter and introduce a statement from Corcoran that he hid drugs on his person during a controlled buy and that Bilse did not find the drugs. The State would then be allowed to question Bilse on rebuttal about whether he

believed Corcoran had in fact concealed drugs on his person during the prior controlled buy. Hill's counsel objected to the circuit court's ruling, and the court reaffirmed its ruling.

On appeal, Hill again challenges that ruling and argues that the court's limitation of testimony on the Corcoran matter restricted his constitutional right to confront the witnesses against him. *See* U.S. CONST. amend. VI. As a threshold matter, the State argues that Hill did not base his argument on constitutional grounds in the circuit court and, consequently, has forfeited the right to argue the constitutionality issue on appeal. As discussed below, we reject Hill's argument on the merits and, therefore, we need not decide whether it was forfeited.

While a criminal defendant is entitled to significant latitude on cross-examination, it is the duty of the circuit court to curtail any unfair prejudice by limiting cross-examination that might divert the jury to extraneous matters or confuse it by placing undue emphasis on collateral issues. *State v. Rhodes*, 2011 WI 73, ¶¶47-48, 336 Wis. 2d 64, 799 N.W.2d 850; *State v. McCall*, 202 Wis. 2d 29, 41-42, 549 N.W.2d 418 (1996). A circuit court has great discretion in deciding whether to limit the scope of cross-examination. *Nimmer v. Purtell*, 69 Wis. 2d 21, 39, 230 N.W.2d 258 (1975).

We conclude that the circuit court properly exercised its discretion when it imposed limitations on the scope of Bilsle's testimony on the Corcoran matter. We are satisfied that, by doing so, the court avoided a mini-trial on the collateral issue of whether Corcoran had, in fact, concealed drugs in his mouth during a controlled drug buy. The confusion likely to have ensued from a mini-trial on this collateral issue outweighed the limited probative value of testimony on the Corcoran matter. *See* WIS. STAT. § 904.03.

We further conclude that the limitations imposed by the circuit court on Bilse's testimony did not violate Hill's constitutional right to confront the witnesses against him or to present a defense. *See generally Davis v. Alaska*, 415 U.S. 308, 315-16 (1974); *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973). Even without the Corcoran evidence, Hill was able to elicit, through cross-examination, testimony from Bilse that he was aware that an informant could hide drugs on his or her person, yet that Bilse did not change his protocol to incorporate searches of an informant's mouth or body cavities. Bilse also admitted that he did not search Mahr's mouth or body cavities for concealed cocaine even though Bilse briefly lost sight of Mahr and even though Mahr returned with the cocaine unpackaged.

The jury also had facts before it that weighed against Mahr's credibility, including thirteen prior convictions and a motive to implicate Hill and have his own charges reduced to lesser offenses. The jury also heard Bilse testify that there was no video evidence of the buy and no identification evidence beyond Mahr's word that he purchased the drugs from Hill. Given that there was other, direct evidence with which Hill was able to attack the credibility of Mahr and Bilse, and to attack the State's case, we conclude that the circuit court properly exercised its discretion in limiting Bilse's potential testimony on the Corcoran matter.

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals