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DISTRICT II

May 11, 2022

To:

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Clerk of Circuit Court
Racine County
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You are hereby notified that the Court has entered the following opinion and order:

2021AP382-CR

State of Wisconsin v. Ronnie L. Johnson (L.C. #2018CF700)

Before Gundrum, P.J., Grogan and Kornblum, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Ronnie L. Johnson appeals from a judgment of conviction, following a jury trial, of possession with intent to deliver cocaine as a party to a crime and as a repeater. He contends that the circuit court erred in denying his motion for a mistrial. 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 (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

On October 5, 2017, police executed a search warrant at the home of Johnson's girlfriend, Tacoya Booker, in Racine. In the bedroom that Booker and Johnson shared, police found a backpack containing cocaine, digital scales, corner-cut baggies, a cutting agent, an electric mixer, and two firearms. Booker indicated that the backpack was Johnson's, and the State charged him with multiple crimes.

Prior to trial, Johnson filed a motion asking that the State "be prohibited from introducing out of court statements of nonwitnesses. Specifically statements of confidential informants and/or 'concerned citizens.'" The circuit court asked the prosecutor whether the State intended to confine itself to informing the jury that a search warrant was executed and not tell the jury the basis, which included such hearsay statements. The prosecutor agreed.

On the first day of trial, Johnson again expressed concern that the State's witnesses might reveal hearsay statements supporting the search warrant. The prosecutor assured the court that she would not elicit such testimony. However, the prosecutor did note that she intended to show that Johnson was the "target" of the search warrant. Johnson did not object. The circuit court cautioned the parties to "proceed carefully" when addressing the circumstances of the search warrant—particularly as they related to confidential informants/concerned citizens.

During trial, the prosecutor asked police investigator Donald Nuttall whether he had been investigating Johnson the month before the search of Booker's home.² Nuttall confirmed that he had been. The prosecutor then asked Nuttall to identify Johnson, which he did. Immediately

² The specific question was, "In directing your attention to September of 2017, during that month were you investigating Ronnie Johnson?"

thereafter, Johnson objected and moved for a mistrial on the ground that Nuttall's testimony about investigating Johnson violated the circuit court's ruling regarding how the parties address the circumstances of the search warrant. The circuit court denied the motion, determining that no violation had occurred.

Ultimately, the jury found Johnson guilty of possession with intent to deliver cocaine as party to a crime and as a repeater. It found him not guilty of several other charges.³ The circuit court imposed a sentence of three years of initial confinement and three years of extended supervision. This appeal follows.

On appeal, Johnson contends that the circuit court erred in denying his motion for a mistrial. The decision to grant or deny a motion for a mistrial rests within the circuit court's sound discretion. *State v. Doss*, 2008 WI 93, ¶69, 312 Wis. 2d 570, 754 N.W.2d 150. The court "must determine, in light of the whole proceeding, whether the claimed error was sufficiently prejudicial to warrant a new trial." *Id.* (citation omitted). We will not reverse the denial of a motion for a mistrial absent an erroneous exercise of discretion. *Id.*

Here, we are satisfied that the circuit court properly exercised its discretion in denying Johnson's motion for a mistrial. As noted by the court, there was no violation of its ruling regarding how the parties address the circumstances of the search warrant. That is, there was no discussion of confidential informants/concerned citizens and their hearsay statements supporting the search warrant. Rather, there was simply a brief recognition that Nuttall had been

³ The other charges were maintaining a drug trafficking place as party to a crime and as a repeater and two counts of possession of a firearm by a felon as a repeater.

investigating Johnson the month before the search. This was in line with the prosecutor's stated intention to show that Johnson was the "target" of the search warrant. It was not unduly prejudicial, as the jury was aware of the search warrant and would reasonably expect some kind of police investigation prior to its application and execution.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals