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**DISTRICT II**

June 17, 2020

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

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2019AP682-CR

State of Wisconsin v. Brady T. Schoonover (L.C. #2017CF101)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**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).**

Brady T. Schoonover appeals from a judgment convicting him of three counts of first-degree sexual assault of a child as a party to a crime. He contends that the circuit court erroneously exercised its discretion in permitting the State to introduce evidence of the child's character for truthfulness. 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 (2017-18).<sup>1</sup> We affirm.

Schoonover and his brother were jointly charged with numerous sex offenses relating to a child with the initials T.P. In his opening statement at trial, Schoonover’s counsel suggested that T.P. was lying. Specifically, he said that T.P. and the two defendants “cannot all be telling the truth,” and that “[s]omeone is not telling the truth.” He then cited discrepancies in T.P.’s various pretrial statements about when the offenses allegedly took place. In a separate opening statement, counsel for Schoonover’s brother reminded the jury that it was not enough for the State to prove that T.P. was “picked on” or “bullied” by the defendants.

In response, the State sought to introduce opinion testimony from one of T.P.’s teachers that, based upon her experience with him at school, T.P. was a truthful person. Schoonover objected. The circuit court overruled the objection and permitted the State to introduce the evidence pursuant to WIS. STAT. § 906.08(1).

Ultimately, the jury found Schoonover guilty of three counts of first-degree sexual assault of a child as a party to a crime.<sup>2</sup> The circuit court imposed an aggregate sentence of fourteen years of initial confinement and fourteen years of extended supervision. Schoonover now appeals.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

<sup>2</sup> The jury also found Schoonover’s brother guilty of two counts of first-degree sexual assault of a child as a party to a crime.

On appeal, Schoonover contends that the circuit court erroneously exercised its discretion in permitting the State to introduce evidence of T.P.'s character for truthfulness. Specifically, he maintains that there was not a sufficient attack on T.P.'s character for truthfulness to invoke WIS. STAT. § 906.08(1).

Under WIS. STAT. § 906.08(1), the credibility of a witness may be supported by evidence in the form of reputation or opinion if: (a) the evidence “refer[s] only to character for truthfulness or untruthfulness;” and (b) “the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.” Whether a witness’s character for truthfulness has been attacked is a discretionary determination. *State v. Eugenio*, 219 Wis. 2d 391, 405, 579 N.W.2d 642 (1998).

Here, T.P.'s character for truthfulness was attacked, not by opinion or reputation evidence, but “otherwise” in the form of the opening statements. *See id.* at 401-02 (opening statement remarks can constitute an attack on a witness’s character for truthfulness). Again, in his opening statement, Schoonover’s counsel warned the jury that “[s]omeone was not telling the truth.” By subsequently focusing on discrepancies in T.P.’s various pretrial statements, counsel implied that T.P. was lying and had, in fact, lied on more than one occasion about the offenses, evincing a pattern of deceit. In a separate opening statement, counsel for Schoonover’s brother suggested a motivation for the deceit, i.e., T.P.’s anger from being “picked on” or “bullied” by the defendants. Given these remarks, we cannot say that the circuit court erroneously exercised its discretion in determining that T.P.’s character for truthfulness had been attacked. Accordingly, we conclude that the court properly allowed the State to introduce evidence of T.P.’s truthful character pursuant to WIS. STAT. § 906.08(1).

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.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*