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**DISTRICT III**

February 9, 2021

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

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2019AP1542-CR                      State of Wisconsin v. James Joseph Cadiz-Taylor  
(L. C. No. 2016CF1329)

Before Stark, P.J., Hruz and Seidl, 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).**

James Cadiz-Taylor appeals from a judgment convicting him of intimidation of a witness, disorderly conduct, criminal damage to property and theft—each as a matter of domestic abuse and as a repeat offender. He also appeals from a postconviction order denying his claims that the circuit court erred in excluding Facebook messages Cadiz-Taylor sought to introduce to impeach the victim, or, alternatively, that counsel provided ineffective assistance by failing to take the

necessary steps to assure the admission of the Facebook messages. 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). Specifically, we conclude that any error by the circuit court was harmless and that any deficient performance by counsel was nonprejudicial.

This court will independently determine whether a circuit court’s erroneous admission of evidence was harmless or whether counsel’s performance prejudiced the defendant. *See State v. Hunt*, 2014 WI 102, ¶21, 360 Wis. 2d 576, 851 N.W.2d 434 (harmless error); *State v. Sholar*, 2018 WI 53, ¶35, 381 Wis. 2d 560, 912 N.W.2d 89 (ineffective assistance claim). An error is harmless when it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error. *State v. Harris*, 2008 WI 15, ¶43, 307 Wis. 2d 555, 745 N.W.2d 397. Similarly, in evaluating whether a defendant has been prejudiced by counsel’s actions, “we examine whether there is ‘a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.’” *Sholar*, 381 Wis. 2d 560, ¶33 (citation omitted). Both of these standards require an examination of the evidence produced at trial.

Here, the victim, Carrie,<sup>1</sup> testified that she and Cadiz-Taylor were married but separated at the time of the incident giving rise to the charges. Cadiz-Taylor had been gradually removing his things from the mobile home they had shared. One evening, when Cadiz-Taylor came to the mobile home, Carrie told him to just take his things and go. Cadiz-Taylor responded that he would never leave and that he would burn the place down before he left. When Carrie tried to

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<sup>1</sup> Pursuant to the policy underlying WIS. STAT. RULE 809.86(4) (2017-18), we use pseudonyms when referring to the victim and her daughter.

walk away, Cadiz-Taylor grabbed her arm and pulled her back, leaving two bruises on her bicep. After the argument, Carrie went to her bedroom and fell asleep.

Carrie awoke the following morning to the sound of Cadiz-Taylor “rapping” loudly in the shower. Upon seeing that Cadiz-Taylor was in the mobile home, Carrie’s six-year-old daughter Nicki asked Cadiz-Taylor to take his stuff and go, and not to come back. Cadiz-Taylor told Nicki that she “better shut the fuck up or he would whoop her ass.” When Carrie told Cadiz-Taylor that he should not talk to Nicki like that, Cadiz-Taylor “got aggressive.” Carrie told Cadiz-Taylor that she was going to call the police, and he responded by trying to grab her phone. In the process of struggling for her phone, Cadiz-Taylor scratched Carrie’s shoulder, spit in her face, and accidentally elbowed Nicki—who was at Carrie’s side—in the eye. After taking Carrie’s cell phone, Cadiz-Taylor smashed a cordless phone on the kitchen floor and broke Carrie’s laptop in the living room. Cadiz-Taylor told Carrie that she was “not fucking calling anyone.” Carrie then grabbed the children and fled on foot, in her pajamas and without shoes, to her mother’s house, from where she called the police.

On cross-examination, Carrie admitted that her marriage was not happy, that she and Cadiz-Taylor had accused one another of cheating, and that they frequently argued. Carrie denied ever having testified previously that Cadiz-Taylor did not physically assault her or that she had gotten her phone back. Carrie initially denied ever having resumed contact with Cadiz-Taylor or having Facebook conversations with him after the incident. Carrie then admitted, however, it was possible that she had a post-incident Facebook conversation in which Cadiz-Taylor said he loved her, and she responded, “thanks, the feeling is mutual,” and another conversation in which she wrote “I love you” to Cadiz-Taylor.

During a recess, Cadiz-Taylor's trial counsel attempted to introduce a packet of Facebook messages between Carrie and Cadiz-Taylor to further impeach Carrie. However, counsel did not have additional copies for the State because Cadiz-Taylor had just given the materials to counsel the morning of trial, and the circuit court refused to have the clerk make copies. The court excluded the Facebook materials on the grounds that any post-incident conversations that did not discuss the incident were minimally relevant, at best, and would be a waste of time.

Nicki corroborated a substantial portion of Carrie's testimony. Nicki testified that when she was in first grade, Cadiz-Taylor came into the room when she and her mother were snuggling. Nicki told Cadiz-Taylor to "go away" and "never come again," and he got mad. Cadiz-Taylor spit in Carrie's face, hit Nicki in the eye with his elbow when he tried to take Carrie's phone away, and then broke the phone and computer.

Two Green Bay police officers who responded to Carrie's phone call further corroborated her account. Officer Marc Opicka testified that he observed and photographed a damaged laptop and cordless phone that were lying on the floor of the mobile home. He also observed and photographed injuries to Carrie's right bicep and the collarbone area of her shoulder and to Nicki's eye. The photographs Opicka took were entered into evidence.

Officer Matthew Knutson also observed the broken cordless phone and laptop on the floor of the mobile home, and he testified they were both damaged beyond repair. He took a statement from Carrie and, while doing so, noticed that she had a scratch near her collarbone and some bruising on her right arm. Knutson also saw that Nicki had a bit of swelling above her left eye.

Cadiz-Taylor's cousin, A.Z. Flowers, testified for the defense. Flowers said that he went to the mobile home with Cadiz-Taylor on the day of the incident and witnessed an argument between Cadiz-Taylor and Carrie. Flowers saw Cadiz-Taylor take Carrie's phone, but he did not see any hitting and did not see the children. Flowers also denied seeing Cadiz-Taylor smash the cordless phone or laptop. Once Cadiz-Taylor had Carrie's phone, Flowers said he and Cadiz-Taylor just left. Flowers also said that Carrie got her phone back a day or two after the incident.

Having considered the evidence produced at trial, we conclude it is clear beyond a reasonable doubt that a rational jury would have found Cadiz-Taylor guilty even if the circuit court had admitted the Facebook messages. First, the evidence against Cadiz-Taylor was strong. Carrie's testimony was corroborated by her daughter's testimony, the observations of two police officers shortly after the incident, and photographs of the injuries to Carrie and Nicki and of the damage to the laptop and cordless phone. No contrary evidence was produced to explain how those injuries and that damage would have occurred, if not in the manner described by Carrie and Nicki.

Second, nothing in the Facebook messages amounted to a recantation of any of the allegations Carrie had made. The sole purpose for admitting the exchanged messages would have been to impeach Carrie for her testimony that she had had no contact with Cadiz-Taylor and did not exchange Facebook messages with him after the incident. However, Cadiz-Taylor's trial counsel had already partially impeached Carrie in that regard through her admission that it was possible she had sent at least two messages to Cadiz-Taylor after the incident indicating that she loved him. Moreover, trial counsel had also impeached Carrie by exposing potential bias stemming from her argumentative relationship with Cadiz-Taylor and her anger at him. The jury

had a fair opportunity to consider Carrie's credibility, weighing any motives she had to lie against the evidence corroborating her account.

Because we find no reasonable probability that the Facebook messages would have altered the outcome of the trial, we conclude that any error by the circuit court in excluding the messages was harmless, and any error by Cadiz-Taylor's trial counsel in failing to obtain the messages earlier was nonprejudicial.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2017-18).

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*