



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 I

June 22, 2021

To:

Hon. T. Christopher Dee
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233-1425

Hon. Thomas J. McAdams
Circuit Court Judge
Milwaukee County Circuit Court
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State St., Room 114
Milwaukee, WI 53233

Hans P. Koesser
Koesser Law Office, S.C.
P.O. Box 941
Kenosha, WI 53141-0941

John D. Flynn
Assistant District Attorney
District Attorney's Office
821 W. State St., Ste. 405
Milwaukee, WI 53233

Sara Lynn Shaeffer
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

2018AP1629-CR State of Wisconsin v. Devonte D. Williams (L.C. # 2014CF3848)

Before Dugan, Donald and White, 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).

Devonte Williams appeals a judgment convicting him of attempted first-degree intentional homicide, as a party to a crime and with use of a dangerous weapon. He also appeals an order denying his postconviction motion. Williams argues that the circuit court erroneously exercised its discretion by allowing Detective Nicole Reaves to testify at trial about the victim's prior

inconsistent statements.¹ After reviewing the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2019-20).² Upon review, we affirm.

The victim, seventeen-year-old T.D., was employed at Annie’s Discount Tobacco. On August 13, 2014, T.D. went to collect his wages at the store from Syed Rizvi, his employer. Both Williams and Sherrone Thornton, who were also employees, were present when T.D. arrived. Rizvi refused to give T.D. his money. T.D. was choked, kicked, punched, and pistol whipped, before being hauled outside, shot in the head, and left in the backyard of the house across the alley from the store. T.D. was transported to Children’s Hospital, where he remained for several weeks with severe injuries. Williams was convicted after a jury trial of attempted first-degree intentional homicide for his role in the attack on T.D.

On appeal, Williams argues that the circuit court erroneously exercised its discretion by allowing Detective Reaves to testify at trial about prior inconsistent statements T.D. made at the hospital eight days after the shooting. A prior inconsistent statement is admissible as substantive evidence of the truth of the matter asserted where, as here, the declarant testifies at the trial and is subject to cross-examination concerning the statement. *See* WIS. STAT. § 908.01(4)(a)1. Whether to admit a prior inconsistent statement is committed to the circuit court’s discretion. *See State v. Nelis*, 2007 WI 58, ¶¶26-28, 300 Wis. 2d 415, 733 N.W.2d 619. “The circuit courts have ‘broad discretion to admit or exclude evidence’” *Id.*, ¶26 (citation omitted). We will affirm the circuit court’s evidentiary ruling if the court properly exercised its discretion by applying the correct legal

¹ In Williams’s postconviction motion, he also challenged Detective Reaves’s testimony that the victim identified Williams in a photo array. Williams has not renewed that argument on appeal.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

standard to the relevant facts of record. *State v. Sveum*, 220 Wis. 2d 396, 405, 584 N.W.2d 137 (Ct. App. 1998).

At trial, T.D. testified that he did not remember much about the day he was attacked and said that he had been having memory problems since he was shot in the head. T.D. testified that after Rizvi refused to give him his wages, Thornton grabbed him and dragged him into the back storage area of the store. T.D. testified that Thornton and Williams beat him until he became unconscious. He also testified that he regained consciousness in the hospital over two weeks later on August 31, 2014, and said that he did not remember talking to the police on August 21, 2014.

The State then called Detective Reaves to testify about her interview with T.D. at the hospital on August 21, 2014, ten days earlier than the day T.D. testified he became conscious. Detective Reaves testified that T.D. was alert, communicating well and joking with his family when she interviewed him. Detective Reaves testified that T.D. told her that when he arrived at Annie's Discount Tobacco, Thornton was working in the public area of the store, Williams was behind the counter area, and Rizvi was at the cash register. T.D. said that he demanded his money from Rizvi, but Rizvi would not give him the money he was owed. T.D. said that he put his fists up into a fighting stance. Rizvi then directed Williams and Thornton to "handle" him.

Detective Reaves testified that T.D. told her that *Williams*, not Thornton, grabbed him, put him in a choke hold and tried to "choke him out", dragging him to the back room of the store. T.D. told her that Williams kicked and punched him multiple times. Rizvi then came to the back room and pulled a silver handgun from his waist band. T.D. said Rizvi started pistol whipping him and he lost consciousness. T.D. said that he woke in some grass near a back alley with Rizvi standing over him with the gun pointing at him. T.D. said that he tried to run past Rizvi, then heard the gun

fire. T.D. told Detective Reaves that he did not know what happened after that. Detective Reaves said that T.D. told her that Thornton remained in the front of the store manning the cash register and was not involved in the assault.

Williams argues that Detective Reaves should not have been allowed to testify at trial about anything beyond Williams pulling T.D. to the back of the store and beating him, rather than Thornton doing so. Williams contends that only the initial portion of T.D.'s statement to Detective Reaves was directly inconsistent with T.D.'s trial testimony.

Williams's argument overlooks the fact that T.D. told Detective Reaves that Thornton remained at the front of the store behind the cash register and did not participate in the beating *at all*. T.D.'s trial testimony that the three men beat him was inconsistent with T.D.'s statement to Detective Reaves that Thornton stayed in the front of the store working at the cash register while Williams and Rivzi beat him, he was dragged outside, and Rivzi shot him.

Moreover, T.D. testified at trial that he could not remember much of what occurred when he was attacked. Wisconsin courts have previously upheld circuit court evidentiary rulings that a declarant's inability to testify about a prior statement the declarant made due to lack of memory renders the declarant's prior statement inconsistent for purposes of WIS. STAT. § 908.01(4)(a)1. *See State v. Lenarchick*, 74 Wis. 2d 425, 429, 434-36, 247 N.W.2d 80 (1976) (upholding the admissibility under WIS. STAT. § 908.01(4)(a)1 of a witness's prior statement to the police that Lenarchick admitted killing the victim when the witness denied any recollection of Lenarchick's inculpatory statements at trial); *Nelis*, 300 Wis. 2d 415, ¶¶32-33 (holding that prior inconsistent statements by a witness to a police officer that he saw the defendant on top of the victim and the victim crying and bleeding were admissible under WIS. STAT. § 908.01(4)(a)1 after the witness

testified at trial that he did not remember the defendant on top of the victim and did not remember seeing the victim crying and bleeding). Here, the circuit court properly exercised its discretion in allowing Detective Reaves's testimony about T.D.'s prior statements because T.D. testified at trial that he could not recall much of what happened to him during the beating in the store and could not remember anything that happened outside the store.

Upon the foregoing,

IT IS ORDERED that the judgment and order of the circuit court is summarily affirmed.

See 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