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DISTRICT II

November 3, 2021

To:

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

2019AP1888-CR

State of Wisconsin v. Ryan E. Moston (L.C. #2016CF1024)

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

Ryan E. Moston appeals from an amended judgment convicting him of stalking (with bodily harm), false imprisonment and substantial battery, all as domestic abuse, and from a judgment convicting him of disorderly conduct and five counts of misdemeanor battery. On appeal, he challenges the circuit court's evidentiary ruling allowing an expert to testify about the general principles and features of domestic violence. 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 because the circuit court properly exercised its discretion when it permitted the domestic violence expert's exposition testimony at trial.

The charges against Moston arose out of numerous instances of domestic violence directed at his spouse. Pretrial, the State gave notice that it intended to present Cyrus Behroozi as an expert in the field of domestic violence to discuss the centrality of power and control in domestic violence, why domestic violence victims often remain in violent relationships, and how children are used to maintain control over the victim. Moston sought a *Daubert*² hearing. After the hearing, the circuit court determined that Behroozi could testify as an expert, and he testified at trial. The jury convicted Moston, and he challenges the circuit court's evidentiary ruling on appeal.

On appeal, Moston argues that Behroozi's testimony did not assist the jury in understanding or determining any fact in the case, his testimony and opinion were not based on sufficient facts, and his testimony indirectly bolstered the victim's credibility. The State counters that the circuit court applied the proper legal standards and properly exercised its discretion when it admitted Behroozi's expert testimony. We agree with the State.

Whether to admit expert testimony was discretionary with the circuit court. *State v. Jones*, 2018 WI 44, ¶33, 381 Wis. 2d 284, 911 N.W.2d 97. "Expert testimony ... is required only if the issue to be decided by the trier of fact is beyond the general knowledge and

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

² *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

experience of the average juror.” *State v. Owen*, 202 Wis. 2d 620, 632, 551 N.W.2d 50 (Ct. App. 1996).

WISCONSIN STAT. § 907.02(1) “permit[s] an expert witness to testify in the form of an opinion ‘or otherwise,’ including exposition testimony on general principles without explicitly applying those principles to, or even having knowledge of, the specific facts of the case.” *State v. Dobbs*, 2020 WI 64, ¶42, 392 Wis. 2d 505, 945 N.W.2d 609. Before allowing exposition testimony, “the circuit court, as gatekeeper, must consider the following four factors:”

(1) whether the expert is qualified; (2) whether the testimony will address a subject matter on which the factfinder can be assisted by an expert; (3) whether the testimony is reliable; and (4) whether the testimony will ‘fit’ the facts of the case.

Id., ¶43 (citation omitted). Testimony is helpful or fits “if it concerns a matter beyond the understanding of the average person, assists the jury in understanding facts at issue, or puts the facts in context.” *Id.*, ¶44 (citation omitted). “Establishing the fit of exposition testimony is particularly important because, unlike opinion testimony, exposition testimony does not in and of itself explicitly connect the witness’s expertise to the particular facts of the case.” *Id.*

In making its pretrial decision to admit Behroozi’s testimony, the circuit court rejected Moston’s arguments that Behroozi was not qualified and that his testimony would be speculative and unreliable. The circuit court found that Behroozi had considerable experience, training and background with domestic violence cases and that he was an expert qualified to testify regarding the “power and control wheel and how it relates to instances of domestic violence.”³ The court

³ Behroozi described the power and control wheel, which was developed and published in 1984, as “pretty much the gold standard as it relates to training around power and control and the tactics that perpetrators of domestic violence use to control their victims when they are in intimate relationships.”

also assessed the reliability of the power and control wheel. The circuit court determined that Behroozi was “qualified to offer testimony through use of the power and control wheel model as to the common means and methods used by domestic abuser[s] or the reactions or effects on a victim of domestic violence.”⁴

We conclude that the circuit court properly exercised its discretion when it admitted Behroozi’s exposition testimony. *See id.*, ¶27. The circuit court considered the appropriate *Dobbs* factors and reasonably concluded that Behroozi’s testimony fit the facts of the case. Behroozi was qualified as an expert, could discuss the power and control wheel, and could offer specialized knowledge to educate the jury about domestic violence principles. Behroozi’s testimony gave the jury a framework for assessing the conduct of Moston and the victim in the case.

We reject Moston’s complaint that Behroozi did not rely upon adequate facts to testify in this case (essentially an argument that Behroozi’s testimony did not fit the case).⁵ *See id.*, ¶42. Behroozi’s testimony need not have been conditioned on applying the domestic violence principles he discussed to the facts of the case. *See id.*, ¶44. It was the jury’s role to draw

⁴ At trial, Behroozi testified about his training and experience with regard to domestic violence issues. Behroozi explained the origins, components and application of the power and control wheel to understanding domestic violence (i.e., why a victim would remain in a violent relationship and the characteristics of batterers). Behroozi testified about the characteristics of victims of domestic violence, but he did not testify about any facts of Moston’s case.

⁵ We do not address Moston’s argument that Behroozi’s testimony impermissibly bolstered the victim’s credibility because Moston cites no legal authority for the proposition. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we will not develop a litigant’s legal argument).

inferences from Behroozi's testimony and the other evidence in the case. *See id.*, ¶36;⁶ *see also State v. Guerard*, 2004 WI 85, ¶49, 273 Wis. 2d 250, 682 N.W.2d 12 (credibility determinations were for the jury).

We conclude that the circuit court properly exercised its discretion when it admitted Behroozi's exposition testimony at trial.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are 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

⁶ Because we affirm on *State v. Dobbs*, 2020 WI 64, 392 Wis. 2d 505, 945 N.W.2d 609, exposition testimony grounds, we need not address Moston's arguments distinguishing *State v. Jensen*, 147 Wis. 2d 240, 432 N.W.2d 913 (1988) (expert witness may be asked to describe the complainant's behavior and then describe the behavior of victims of the same type of crime, if the testimony helps the jury understand a complainant's reactive behavior). "We decide cases on the narrowest possible grounds," and we do not reach issues we need not reach. *Village of Slinger v. Polk Props. LLC*, 2021 WI 29, ¶26 n.12, 396 Wis. 2d 342, 957 N.W.2d 229.