



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 II

November 10, 2021

To:

Hon. Jason A. Rossell
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County
Electronic Notice

Timothy M. Barber
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Michael D. Graveley
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You are hereby notified that the Court has entered the following opinion and order:

2020AP430-CR

State of Wisconsin v. John D. Williams (L.C. #2017CF1247)

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).

John D. Williams appeals from a judgment convicting him of numerous crimes. He contends that the circuit court erroneously exercised its discretion in admitting the recorded statement of a child at trial. 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.

In February 2017, an eleven-year-old girl named Donna² disclosed to school officials that her father, Williams, had sexually assaulted her. As a result of the disclosure, Donna was forensically interviewed. The State subsequently charged Williams with numerous crimes, including multiple counts of first-degree sexual assault of a child, incest with a child, exposing genitals to a child, and child enticement.

Before trial, the State moved to admit the audiovisual recording of Donna's forensic interview pursuant to WIS. STAT. § 908.08. The State argued that although Donna would be over the age of twelve at the time of trial, the interests of justice warranted the recording's admission.³ Williams objected to the motion. He "concede[d] that the Court [could] find that the requirements of [§] 908.08(3)(b)-(e) [were] met."⁴ However, he disputed that the interests of justice warranted the recording's admission.

² We use the same pseudonym for the victim as the parties.

³ The interests of justice must warrant the recording's admission when the child is over the age of twelve but under the age of sixteen at the time of trial. *See* WIS. STAT. § 908.08(3)(a).

⁴ WISCONSIN STAT. § 908.08(3)(b)-(e) provide:

(b) That the recording is accurate and free from excision, alteration and visual or audio distortion.

(c) That the child's statement was made upon oath or affirmation or, if the child's developmental level is inappropriate for the administration of an oath or affirmation in the usual form, upon the child's understanding that false statements are punishable and of the importance of telling the truth.

(d) That the time, content and circumstances of the statement provide indicia of its trustworthiness.

(e) That admission of the statement will not unfairly surprise any party or deprive any party of a fair opportunity to meet allegations made in the statement.

The circuit court held a hearing on the motion. It began by acknowledging that it had not seen the recording. The court asked Williams' counsel, "[D]o you believe that I need to watch the whole thing before I can make the determination?" Counsel replied, "I don't think that the — that what's on the video is particularly telling." The State agreed with "counsel that the court does not need to view" the recording to determine its admissibility.

Ultimately, the circuit court granted the State's motion. In doing so, the court noted that the only question before it was whether the interests of justice warranted the recording's admission. Upon review of the nonexhaustive factors listed in WIS. STAT. § 908.08(4),⁵ the court

⁵ WISCONSIN STAT. § 908.08(4) provides:

In determining whether the interests of justice warrant the admission of an audiovisual recording of a statement of a child who is at least 12 years of age but younger than 16 years of age, among the factors which the court or hearing examiner may consider are any of the following:

- (a) The child's chronological age, level of development and capacity to comprehend the significance of the events and to verbalize about them.
- (b) The child's general physical and mental health.
- (c) Whether the events about which the child's statement is made constituted criminal or antisocial conduct against the child or a person with whom the child had a close emotional relationship and, if the conduct constituted a battery or a sexual assault, its duration and the extent of physical or emotional injury thereby caused.
- (d) The child's custodial situation and the attitude of other household members to the events about which the child's statement is made and to the underlying proceeding.
- (e) The child's familial or emotional relationship to those involved in the underlying proceeding.
- (f) The child's behavior at or reaction to previous interviews concerning the events involved.

(continued)

concluded that it did. It cited the nature of the alleged conduct, the conduct's duration, and the close emotional relationship between Donna and Williams. It also found that admitting the recording would likely reduce the duration of Donna's testimony, which, in turn, would decrease her stress.

At trial, Donna testified and the State played the recording of her forensic interview. The jury found Williams guilty of sixteen crimes, including multiple counts of first-degree sexual assault of a child, incest with a child, exposing genitals to a child, and child enticement. The circuit court imposed a sentence of imprisonment totaling fifty-five years of initial confinement and thirty-five years of extended supervision. This appeal follows.

On appeal, Williams contends that the circuit court erroneously exercised its discretion in admitting the recording of Donna's forensic interview at trial. He complains that the court failed

(g) Whether the child blames himself or herself for the events involved or has ever been told by any person not to disclose them; whether the child's prior reports to associates or authorities of the events have been disbelieved or not acted upon; and the child's subjective belief regarding what consequences to himself or herself, or persons with whom the child has a close emotional relationship, will ensue from providing testimony.

(h) Whether the child manifests or has manifested symptoms associated with posttraumatic stress disorder or other mental disorders, including, without limitation, reexperiencing the events, fear of their repetition, withdrawal, regression, guilt, anxiety, stress, nightmares, enuresis, lack of self-esteem, mood changes, compulsive behaviors, school problems, delinquent or antisocial behavior, phobias or changes in interpersonal relationships.

(i) Whether admission of the recording would reduce the mental or emotional strain of testifying or reduce the number of times the child will be required to testify.

to watch the recording and make specific findings concerning the requirements of WIS. STAT. § 908.08(3)(b)-(e). He also disputes that the interests of justice warranted the recording's admission.

We are not persuaded by Williams' arguments. To begin, he waived his first complaint via his actions in the circuit court. As noted, Williams indicated that it was not necessary for the court to watch the recording and conceded that it could find that the requirements of WIS. STAT. § 908.08(3)(b)-(e) were met. We will not allow Williams to pursue alleged errors that he himself helped create. *See State v. Hungerford*, 54 Wis. 2d 744, 749, 196 N.W.2d 647 (1972) (“[T]he defendant cannot now be heard to complain about a situation he himself brought about.”).

As for the interests of justice, whether they warranted the recording's admission is a discretionary decision. *See State v. Tarantino*, 157 Wis. 2d 199, 207, 458 N.W.2d 582 (Ct. App. 1990). Here, the circuit court examined the relevant facts known to it, applied the proper standard of law, and reached a conclusion that a reasonable judge could reach. In particular, the court cited the presence of several factors in WIS. STAT. § 908.08(4) to support the recording's admission. On this record, we perceive no erroneous exercise of discretion.

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