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DISTRICT I

November 21, 2023

To:

Hon. Michelle Ackerman Havas
Circuit Court Judge
Electronic Notice

Hon. Glenn H. Yamahiro
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Michael J. Conway
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Patricia A. FitzGerald
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You are hereby notified that the Court has entered the following opinion and order:

2023AP204-CR

State of Wisconsin v. Bruce Grisby (L.C. # 2020CF3950)

Before White, C.J., Donald, P.J., and Geenen, 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).

Bruce Grisby appeals a judgment convicting him of multiple crimes and an order denying his motion for postconviction DNA testing. 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 (2021-22).¹

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The State charged Grisby with five crimes committed against his former girlfriend on two separate dates. As to events that occurred on October 10, 2019, the State charged Grisby with one count of strangulation and suffocation, and one count of false imprisonment. The State also charged Grisby with one count of second-degree sexual assault, one count of false imprisonment, and one count of aggravated battery (great bodily harm with intent to cause bodily harm) for events that began on October 29, 2020 and ended the following day. The matter proceeded to a jury trial where the State presented testimony from the victim, law enforcement, and the victim's medical provider. The victim's testimony included, but was not limited to, her description of Grisby's violent behavior on both dates, Grisby's behavior leading up to the attacks, a sexual assault that took place on October 29, 2020, the events that occurred after Grisby sexually assaulted her, and her attempts to defend herself. Law enforcement testified about the recovery of evidence from the scene of the crimes and the victim's surgeon testified about the victim's injuries, which he stated were consistent with "significant force." The jury found Grisby guilty as charged. The trial court sentenced Grisby to a total of twenty-six years of initial confinement followed by sixteen years of extended supervision.

Following his conviction, Grisby filed a motion for postconviction DNA testing pursuant to WIS. STAT. §§ 809.30 and 974.07. Grisby requested testing of a used condom found under the victim's bed, claiming that the condom did not have his DNA and would therefore prove he did not sexually assault the victim. The postconviction court denied the motion without a hearing, finding that in light of the evidence presented at trial, "there is no reasonable probability that the defendant would not have been prosecuted or convicted even with exculpatory DNA results from the used condom." This appeal follows.

Under WIS. STAT. § 974.07(2), a defendant may, at any time after being convicted, file a motion requesting an order for DNA testing of evidence if all of the following factors are met:

- (a) The evidence is relevant to the investigation or prosecution that resulted in the conviction[.]
- (b) The evidence is in the actual or constructive possession of a government agency.
- (c) The evidence has not previously been subjected to forensic [DNA] testing or, if the evidence has previously been tested, it may now be subjected to another test using a scientific technique that was not available or was not utilized at the time of the previous testing and that provides a reasonable likelihood of more accurate and probative results.

Id.

In reviewing such a motion, the circuit court must order the DNA testing requested if all of the following apply:

1. The movant claims that he or she is innocent of the offense at issue in the motion under sub. (2).
2. It is reasonably probable that the movant would not have been prosecuted [or] convicted ... for the offense at issue in the motion under sub. (2), if exculpatory [DNA] testing results had been available before the prosecution [or] conviction[.]
3. The evidence to be tested meets the conditions under sub. (2)(a) to (c).
4. The chain of custody of the evidence to be tested establishes that the evidence has not been tampered with, replaced, or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, the testing itself can establish the integrity of the evidence.

WIS. STAT. § 974.07(7)(a).

Here, the postconviction court denied Grisby's motion based on his failure to meet the reasonable probability condition set forth in WIS. STAT. § 974.07(7)(a)2 given the weight of the

other evidence. Based on the totality of the record, we agree with the postconviction court's analysis. Evidence of the assault came primarily from the victim's detailed testimony, which the jury found to be credible. The State presented photographs of the crime scene, the state of which was consistent with the victim's testimony. Law enforcement testified, describing the disorder of the victim's apartment, which was also consistent with the victim's description. The victim's medical provider testified, stating that her injuries were consistent with an attack. In short, even if the DNA testing had taken place, it would not have altered the results of the trial.

For the forgoing reasons, we affirm the judgment of conviction and the order denying Grisby's postconviction motion.

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals