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

October 1, 2025

To:

Hon. Angelina Gabriele
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
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Philip J. Brehm
Electronic Notice

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

2024AP1756-CR State of Wisconsin v. Ricky Vines (L.C. #2021CF1094)

Before Neubauer, P.J., Grogan, and Lazar, 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).

Ricky Vines appeals from a judgment convicting him of six counts of first-degree child sexual assault contrary to WIS. STAT. § 948.02(1) (2023-24)[1] and from an order denying postconviction relief. He argues that the evidence at trial was insufficient as to the lone count that alleged sexual assault of a child under the age of twelve contrary to § 948.02(1)(b). 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. Because the evidence presented at trial

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

was sufficient for the jury to conclude that Vines had sexual intercourse with a victim who was under twelve years old, we affirm.

The State charged Vines with four counts of sexually assaulting Mary and two counts relating to another minor victim, Mary's cousin Alice.[2] Vines pled not guilty to all of the charges. At issue in this appeal is Count 1, which arose out of an allegation that Vines sexually assaulted Mary by performing cunnilingus on her between 2013 and 2015. At trial, Mary testified and confirmed July 16, 2005, as her date of birth. She testified further that before she turned eleven years old, she spent every other weekend at her father's home in Kenosha with her stepmother, her brother, and Vines, her stepmother's father. She described occasionally sleeping on the floor or the couch in the living room of the home, where Vines also slept.

When asked if Vines ever touched her in a way that made her feel uncomfortable, Mary said yes. She then described an incident in which she was laying on the floor of the living room and woke up to discover her pants were off and Vines was touching her vagina. Mary then described what happened next, stating that she tried to

> act like I was, like, asleep, … and when I was like, fully alert, like, his mouth was on my vagina, and I, like, moved over, kind of made, like, a grunting sound to, like, move, but still acted like I was sleeping because - - I don't know. And I, like, grabbed to pull at my pants and, like, and grabbed my blanket and moved over and he went away.

In response to follow-up questioning by the State, Mary confirmed that Vines had initially touched her vagina with his fingers and then put his mouth on her vagina, which she knew "[b]ecause I opened my eyes a little bit to see who it was." Mary could not recall how old she

[2] Mary and Alice are pseudonyms.

was when this incident occurred but agreed that she had been "somewhere between third and fifth grade."

At the close of evidence, Vines moved to dismiss the charges against him. The trial court denied the motion because, in its view, "[t]here was sufficient evidence presented as to each count to where the jury could find proof beyond a reasonable doubt that Mr. Vines is guilty of the offenses charged." The court then instructed the jury that, as to Count 1, the State was obliged to prove beyond a reasonable doubt that: (1) Vines had sexual intercourse with Mary; and (2) Mary was under twelve years old at the time of the intercourse. It further instructed the jury, consistent with the Wisconsin pattern instruction that defines "sexual intercourse" for the purpose of WIS. STAT. § 948.01(6), that "[s]exual intercourse means any intrusion, however slight, by any part of a person's body or of any object, into the genital or anal opening of another. Emission of semen is not required. Sexual intercourse includes cunnilingus. Cunnilingus means oral contact with the clitoris or vulva." *See* WIS JI—CRIMINAL 2101B.

The jury convicted Vines on all six counts. Thereafter, Vines filed a postconviction motion challenging the sufficiency of the evidence as to Count 1. In particular, he argued that he could only be convicted if there was evidence that "[his] mouth intruded [into] the genital opening of [Mary]" and that she had only testified that his mouth was *on* her vagina when she awoke. After reviewing the trial testimony relevant to this count, the circuit court denied the motion.

On appeal, Vines again argues that the evidence was insufficient to support a conviction as to Count 1. To prevail on a sufficiency of the evidence challenge, Vines must prove that "the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value

and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). We cannot disturb the verdict "[i]f any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, … even if [we] believe[] that the trier of fact should not have found guilt based on the evidence before it." ***Id.***

Vines cannot meet this high burden. First-degree sexual assault under WIS. STAT. § 948.02(1)(b) is defined as "sexual intercourse with a person who has not attained the age of [twelve] years." This offense requires proof that the defendant had sexual intercourse with the victim, and that the victim was under twelve years old at the time the intercourse occurred. Sexual intercourse includes cunnilingus, which is "oral contact with the clitoris or vulva." WIS JI—CRIMINAL 2101(B).

Viewed in the light most favorable to the State, the evidence at trial was sufficient for the jury to conclude that Vines sexually assaulted Mary by performing cunnilingus on her and that he did so before she turned twelve years old. Mary testified that she awoke one night at her father's house to discover Vines putting his mouth on her vagina. Though she could not identify the exact date on which this incident occurred, she agreed that it happened sometime between her third and fifth grade years in school. From this testimony, the jury could infer that the assault occurred before Mary reached the age of twelve. The jury could also infer from Mary's testimony that Vines had made oral contact with her clitoris or vulva on the night in question.

Vines contends that sexual intercourse under WIS. STAT. § 948.02(1)(b) requires proof of an intrusion into the victim's body. He argues that the statutory definition of "sexual intercourse" in WIS. STAT. § 948.01(6) "is obviously written in a way to list the various ways

penetration can occur." Because Mary testified only that Vines put his mouth *on* her vagina, he contends that the evidence was insufficient to establish any penetration *into* her body that is required to support a conviction under § 948.02(1)(b).

We rejected a similar argument in ***State v. Harvey***, 2006 WI App 26, 289 Wis. 2d 222, 710 N.W.2d 482. There, we concluded that third-degree sexual assault by "an act of nonconsensual cunnilingus" could be established by proof that a defendant "plac[ed] his mouth *on* the victim's genital area." ***Id.***, ¶21 (emphasis added). In his principal brief, Vines acknowledges our conclusion in ***Harvey*** but argues that it does not bind us in this case because the issue in ***Harvey*** was not whether a penetrative act was required, but instead whether the offense required proof that the victim's clitoris or vulva was stimulated as the result of the cunnilingus. Alternately, he argues that ***Harvey*** was wrongly decided because we improperly "rewr[o]te the statute [to] define the term cunnilingus in a way that did not involve an intrusion into the victim's body." In his reply brief, however, Vines acknowledges that we are bound to follow ***Harvey***.

We agree that we are bound by ***Harvey*** and that it controls here. Though the issue in that case is not identical to the challenge Vines raises here, we adopted a definition of cunnilingus in ***Harvey*** that does not require penetration. ***Id.***, ¶¶17, 20-21. As a prior published decision of this court, we are not at liberty to ignore ***Harvey*** or revisit its analysis. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997) ("[O]nly the supreme court, the highest court in the state, has the power to overrule, modify or withdraw language from a published opinion of the court of appeals.").

Therefore,

IT IS ORDERED that the judgment and order of the circuit court 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