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**DISTRICT II**

November 5, 2025

To:

Hon. Jason A. Rossell  
Circuit Court Judge  
Electronic Notice

Kelsey Jarecki Morin Loshaw  
Electronic Notice

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

Jacob J. Wittwer  
Electronic Notice

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

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2023AP1216-CR

State of Wisconsin v. Angel Reyes Mendez (L.C. #2019CF1414)

Before Gundrum, 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).**

Angel Reyes Mendez appeals from a judgment of conviction and an order denying his postconviction motion for a new trial. He contends that he is entitled to a new trial because he did not knowingly, voluntarily, and intelligently waive his right to testify. 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 (2023-24).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

In 2019, the State charged Reyes Mendez with three counts of first-degree sexual assault of a child and one count of child enticement. The case proceeded to a jury trial.

At trial, after two defense witnesses had testified, the circuit court asked defense counsel whether Reyes Mendez was also going to testify. Counsel replied that he was not and confirmed that she had had sufficient time to discuss the matter with him.

The circuit court subsequently engaged Reyes Mendez in a colloquy about the right to testify and the right to remain silent. Regarding the right to testify, the court explained, “you could come up here. I’d swear you under oath, just as we have with all the other witnesses. Your attorney would ask you questions. And then ... the State’s attorney, would be able to cross-examine you.” Regarding the right to remain silent, the court advised, “You also have what’s called the right to remain silent, which is the right not to testify. And I would tell the jury in the jury instructions that they are not to consider your not testifying in any way, shape or form. So they’re not to hold it against you.”

Reyes Mendez affirmed his understanding of both rights. Likewise, he affirmed having had enough time to discuss the matter with defense counsel. When the circuit court asked Reyes Mendez how he wished to proceed, he answered, “I have the feeling that I don’t have to give testimony” and then added, “I want to remain silent.” After confirming that Reyes Mendez had not been threatened or otherwise coerced into his decision, the court found it to be made knowingly, voluntarily, and intelligently.

Ultimately, the jury convicted Reyes Mendez on all counts. The circuit court imposed an aggregate sentence of 30 years of initial confinement and 20 years of extended supervision.

After sentencing, Reyes Mendez filed a postconviction motion for a new trial. In it, he alleged that he did not knowingly, voluntarily, and intelligently waive his right to testify because he did not understand “how a criminal trial works.” Reyes Mendez asserted that he mistakenly believed that, even if he did not testify, his defense counsel could still somehow “present [Reyes Mendez’s] own statements and evidence that he wished the jury to consider.” Reyes Mendez added that his misunderstanding was “likely exacerbated” by his limited English skills.<sup>2</sup>

The circuit court held a hearing on the motion at which both defense counsel and Reyes Mendez testified. According to counsel, she had discussed the decision to testify with Reyes Mendez at least twice—once before trial and once during trial. Before trial, Reyes Mendez was leaning against testifying. During trial, Reyes Mendez told counsel that he did not want to testify. Counsel expressed some concerns with Reyes Mendez’s understanding due to the language barrier between them. She also acknowledged that, after the close of evidence/arguments, Reyes Mendez asked her, “are you going to tell my story now[?]”

Reyes Mendez, meanwhile, testified that he had two conversations with defense counsel about whether he should testify—one during trial and one after trial. Reyes Mendez explained that he wanted to testify “at all times;” however, he was “afraid” of being cross-examined by the prosecutor. Accordingly, Reyes Mendez chose not to testify. However, he insisted that he “thought eventually [his] opportunity to talk was going to take place.” That is because he was the defendant and “no one told [him] that that was going to be the only opportunity that [he] was going to have.”

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<sup>2</sup> Reyes Mendez emigrated from Mexico and does not speak English well. He used an interpreter during court proceedings, including when he told defense counsel that he did not want to testify.

Noting the conflict in testimony about when they had discussed the decision to testify, the circuit court found defense counsel's version more credible than Reyes Mendez's. The court also found that counsel "indicated that she had some concerns about [Reyes Mendez's] level of understanding," but "she believed he understood that he was waiving his right." Finally, the court found that Reyes Mendez's "testimony was self-serving and contradicts the trial record." Therefore, it denied the motion. This appeal follows.

The constitutional right of a criminal defendant to testify on his or her own behalf is a fundamental right that must be waived knowingly, voluntarily, and intelligently. *State v. Weed*, 2003 WI 85, ¶2, 263 Wis. 2d 434, 666 N.W.2d 485. Waiver of the right to testify requires that a circuit court conduct an on-the-record colloquy. *Id.*

Whether a defendant has properly waived his or her right to testify is a question of constitutional fact that presents a two-step process of review. *Id.*, ¶13. We review "the circuit court's findings of historical fact using a deferential standard of review and will uphold the circuit court's findings unless they are clearly erroneous," while the court's determination of constitutional fact is reviewed de novo. *Id.*

Here, the record reveals that Reyes Mendez waived his right to testify because he did not want to face cross-examination. His decision was a rational one, and the circuit court's thorough colloquy ensured that it was made knowingly, voluntarily, and intelligently. In that colloquy, Reyes Mendez did not just offer "yes/no" answers to the court's questions; rather, he made multiple statements ("I have the feeling that I don't have to give testimony" and "I want to remain silent"), which demonstrated an understanding of the options before him.

That Reyes Mendez purportedly believed that he or his defense counsel had some additional right to present statements to the jury after the close of evidence/arguments without facing cross-examination does not render his waiver invalid. To begin, such an additional right does not resemble the right to testify, which is at issue here. In any event, the circuit court did not find the purported belief sincere. As noted, the court found Reyes Mendez’s testimony “self-serving,” and Reyes Mendez has not shown that finding to be clearly erroneous.<sup>3</sup> Accordingly, we are satisfied that the court properly denied the motion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order 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.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*

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<sup>3</sup> It is true that defense counsel recalled Reyes Mendez asking her after the close of evidence/arguments, “are you going to tell my story now[?]” However, this does not establish, as fact, that Reyes Mendez sincerely believed he or his defense counsel could still present his statements to the jury after he had chosen not to testify.