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DISTRICT II

February 4, 2026

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

2024AP722 Paula Pelchat v. Carlton Schley (L.C. #2021CV25)

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

Carlton Schley appeals from a civil judgment entered against him following a jury trial. Schley argues that the trial court erroneously exercised its discretion in allowing his civil trial to proceed before his criminal trial, both of which arose out of the same underlying incident. 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).[1] Because Schley did not establish that the court's decision to allow his civil trial to take place before his criminal trial prejudiced him, we affirm.

On the evening of July 22, 2020, Paula and Lawrence Pelchat were traveling northbound on County Highway A in Mackford, Wisconsin. At the same time, Schley was operating a John Deere sprayer and traveling east on Hickory Drive, which has a stop sign where it intersects with County Highway A. Although the Pelchats had the right of way, Schley entered the intersection and collided with the Pelchats' vehicle. Lawrence died in the collision; Paula survived but sustained serious and permanent physical injuries. After the collision, Schley provided verbal and written statements to police concerning how the collision occurred.

In December 2020, Paula Pelchat filed a civil lawsuit against Schley for the injuries she suffered and the wrongful death of her husband.[2] Schley was deposed in the civil case in February 2021. In May 2022, the State filed a criminal complaint against Schley charging him with two felonies arising out of the same collision that gave rise to Pelchat's civil lawsuit. ***State v. Schley***, Green Lake County Case No. 2022CF96.[3]

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

[2] Pelchat's civil action was originally filed in the Circuit Court for Dane County. In March 2021, the case was transferred to the Circuit Court for Green Lake County.

[3] We can take judicial notice of CCAP records under WIS. STAT. § 902.01. *See* ***Kirk v. Credit Acceptance Corp.***, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522; ***OLR v. Hudec***, 2019 WI 39, ¶32, 386 Wis. 2d 371, 925 N.W.2d 540 (per curiam).

In August 2022, Schley moved to adjourn the civil trial until after the criminal trial concluded. The trial court handling both cases granted Schley's motion.[4] The court initially set a trial date in the civil case for February 28, 2023.

In September 2022, Pelchat filed a motion seeking partial summary judgment on the issue of liability. Schley filed a brief opposing the motion in November 2022, along with an affidavit in which he provided his recollection of events immediately before the accident. Around this time, Schley also provided written responses to Pelchat's discovery requests.

In January 2023, Schley's counsel in the criminal case filed a motion seeking a trial date in July 2023. Shortly after the filing of this motion, Schley's civil counsel asked the trial court to reschedule the February 2023 civil trial date so that it would not take place before the criminal trial. The court agreed to keep the civil trial scheduled after the criminal trial. In April 2023, the trial in Schley's criminal case was set for mid-September 2023 and the trial in the civil case was scheduled for November 2023.

Days before the criminal trial was to begin, Schley requested a continuance, citing issues with discovery. The trial court granted Schley's request and removed the trial date from the calendar. Schley then moved again to reset the trial date in the civil case. At a status conference in both cases held on October 5, 2023, the court rescheduled Schley's criminal trial for December 11, 2023, and his civil trial for January 22, 2024.

[4] The Honorable Mark T. Slate granted Schley's August 2022 adjournment motion. In December 2022, Judge Slate was disqualified from presiding over this case and Schley's criminal case pursuant to WIS. STAT. § 757.19(2)(g). Both cases were then assigned to the Honorable Chad A. Hendee.

Schley's criminal trial began as scheduled on December 11, 2023, but on the second day the trial court granted a mistrial. At the final pretrial conference in the civil case on December 19, 2023, Schley again sought to continue the civil trial until after the criminal trial had concluded in order to protect his Fifth Amendment privilege against self-incrimination. The court questioned this rationale because portions of Schley's deposition in the civil case had been read at the criminal trial before a mistrial was declared and the court did not expect Schley's "story" would change. In response, Schley's counsel expressed concern that "we don't know what new information may be elicited in the direct or cross[-]examining in the civil case, so it's a concern." For her part, Pelchat objected to any further delay of the civil trial. This time, the court declined to reschedule the civil trial:

> As I noted, the [c]ourt recognizes that Mr. Schley had provided sworn testimony regarding what had occurred already in this civil case before the trial, and I know that was a very specific argument at the time. The [c]ourt felt that his rights regarding his Fifth Amendment rights in the criminal matter, at that time, outweighed the rights of Mrs. Pelchat to have this civil matter heard.
>
> However, given, I guess -- and I am not blaming Mr. Schley here -- his counsel for the criminal matter requested and the [c]ourt granted the … mistrial last week. I will note, I don't believe that the [c]ourt had any option other than doing that given the record that was made, but, given all of those factors, and the fact that this matter has been pending so long, I am changing my mind, and I am going to proceed to trial on January 22.[5]

The civil trial took place as scheduled. Schley did not testify in person, but Pelchat played portions of his deposition. At the end of the trial, the jury found Schley liable and awarded substantial money damages to Pelchat. Schley filed a postverdict motion seeking a new

[5] The trial court also stated that the possibility of moving the criminal trial to the January 2024 date set aside for the civil trial had been discussed but the State would not agree, stating that it would not be ready.

trial, arguing that he had been unable to "defend himself" by testifying in the civil trial because of the risk that doing so "would have made him vulnerable at his criminal one." The trial court denied the motion, concluding that a new trial was not required because Schley could have given testimony if he wished and because any prejudice to Schley was outweighed by the importance of resolving the civil case.[6]

This Court reviews a trial court's decision whether to continue a trial under the erroneous exercise of discretion standard. ***State v. Echols***, 175 Wis. 2d 653, 680, 499 N.W.2d 631 (1993). "We will sustain a discretionary decision so long as the [trial] court has examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Industrial Roofing Servs., Inc. v. Marquardt***, 2007 WI 19, ¶84, 299 Wis. 2d 81, 726 N.W.2d 898.

The parties agree that Schley was not entitled to a stay of the civil action merely because a criminal action against him arising out of the same incident was pending. They also appear to agree that no published Wisconsin case provides guidance for a trial court's exercise of discretion in this circumstance. Schley urges us to apply a six-factor test used by several federal district courts in Wisconsin. *See, e.g.*, ***Bailey v. Wienandt***, No. 17-CV-943, 2018 WL 1660731, at *1 (W.D. Wis. Apr. 5, 2018); ***Estate of Swayzer v. Armor Corr. Health Servs., Inc.***, No. 16-CV-1703, 2018 WL 1535953, at *2 (E.D. Wis. Mar. 29, 2018). He argues that all of the factors applied by these courts weigh in his favor here, and that his substantial interest in protecting his Fifth Amendment privilege against self-incrimination weighed in favor of

[6] A second trial in Schley's criminal case began in April 2024. Schley was acquitted.

adjourning the civil trial until the criminal trial had concluded. Schley also contends that the court failed to adequately explain its reasons for reversing course after previously adjourning the civil trial on multiple occasions.

Pelchat contends that the six-factor test upon which Schley relies is not accepted even among district courts within the Seventh Circuit, pointing to a five-factor test used by another district court that considers some factors not addressed in ***Bailey*** or ***Estate of Swayzer***. *See* ***Nowaczyk v. Matingas***, 146 F.R.D. 169, 174 (N.D. Ill. 1993). Regardless of the test applied, she argues that the trial court properly exercised its discretion because it "applied the relevant law to facts of record using a process of logical reasoning." *See* ***Braverman v. Columbia Hosp., Inc.***, 2001 WI App 106, ¶11, 244 Wis. 2d 98, 629 N.W.2d 66. She notes that in its oral ruling denying Schley's final request for a continuance, the court weighed Schley's Fifth Amendment concerns with Pelchat's interest in having her case heard after significant delays and multiple adjournments, and reasonably concluded that Schley's Fifth Amendment right no longer outweighed Pelchat's interest in a prompt resolution of her claims.

In the end, we need not choose between the multi-factor tests to conclude that the trial court did not erroneously exercise its discretion in denying a further continuance of the civil trial. As our supreme court has recognized, "[a] continuance delaying a trial is not a matter of course. An adjournment must be warranted, and a request for such adjournment is '… always addressed to the sound discretion of the trial court, and prejudice must be made to appear in order to set aside its ruling thereon.'" ***Smith v. Plankinton de Pulaski***, 71 Wis. 2d 251, 257, 238 N.W.2d 94 (1976) (quoting ***Gunnison v. Kaufman***, 271 Wis. 113, 119, 72 N.W.2d 706 (1955)).

Schley has not carried his burden of proving that he was prejudiced by the trial court's denial of his request for a continuance. Schley did not testify at the civil trial, but nowhere in his briefs to this court does Schley explain what testimony he might have given had the civil trial occurred after the criminal trial. In his principal brief, he merely asserts that the evidence collected in the civil case after his deposition was taken "would inevitably produce previously unknown issues or shed new light on previously known issues, putting Schley at significant risk for cross[-]examination in the civil trial on issues that were not addressed in his deposition." In his reply brief, Schley is similarly vague: he asserts that he "could have been asked to respond more thoroughly to questions asked at his deposition, or he could have discussed issues on liability and causation that were left unasked at his deposition."

These assertions lack any meaningful specificity in terms of topics or lines of questioning that would have been covered in his testimony at the civil trial had he testified. More to the point, his assertions fail to identify any additional or different information he would have testified to at trial regarding his own observations of the collision beyond that provided to the police, and in his deposition and affidavit.[7] As such, they fall short of establishing that the court's denial of Schley's request for a continuance in his civil trial prejudiced him. And

[7] While the dissent suggests that Schley could not be expected to provide specifics without violating his Fifth Amendment rights, he has not made that argument, nor could he given the posture of the two cases and the record on appeal. For example, in his motions after verdict, Schley suggested that he could have testified about how the hydrostatic drive worked, the lighting on the sprayer, and the direction he intended to travel. However, on appeal, Pelchat explains that none of those things were material; they did not impact Schley's undisputed obligation to yield the right of way to the Pelchats, nor Pelchat's expert's testimony that the physical evidence showed that Schley did not stop at the stop sign. Notably, Schley does not address any of those points in his appellate briefs – effectively conceding them – and he does not contest the jury's verdict that Larry Pelchat was not negligent. Again, this all underscores that Schley has failed to show prejudice.

because he has not carried his burden with respect to prejudice, there is no basis upon which we can conclude that the court's decision constituted an erroneous exercise of discretion.[8]

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

LAZAR, J. (*dissenting*). The facts and law in this appeal compel a reversal and a remand for a new civil trial. Therefore, I respectfully dissent.[9]

It is correct that this court reviews a trial court's decision whether to continue a trial under the erroneous exercise of discretion standard, ***State v. Echols***, 175 Wis. 2d 653, 680, 499 N.W.2d 631 (1993), and that such continuances are "not a matter of course[,]" but "must be warranted[.]" ***Smith v. Plankinton de Pulaski***, 71 Wis. 2d 251, 257, 238 N.W.2d 94 (1976). It is also correct that "[w]e will sustain a discretionary decision so long as the [trial] court has examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Industrial Roofing Servs., Inc. v. Marquardt***, 2007 WI 19, ¶84, 299 Wis. 2d 81, 726 N.W.2d 898.

[8] Pelchat filed a motion pursuant to WIS. STAT. RULE 809.25(3) and WIS. STAT. § 895.044 arguing that Schley's appeal is frivolous and seeking an award of attorney fees and costs. Though Schley's arguments have not persuaded us that the trial court erred in denying his request for a continuance, we do not believe that his appeal is so lacking in merit or improperly motivated as to be frivolous for the purpose of those statutes. Pelchat's motion is therefore denied.

[9] I do, however, agree with the majority that Pelchat's motion seeking attorney fees and costs, pursuant to WIS. STAT. RULE 809.25(3) and WIS. STAT. § 895.044, was properly denied.

Trial courts are not *required* to stay civil proceedings to allow criminal matters to be resolved first. *See* ***United States v. Kordel***, 397 U.S. 1, 11-12 n.27 (1970). However, a stay may be granted in the interest of justice where there are parallel proceedings and allowing the civil matter to proceed first may jeopardize a defendant's rights and force him to choose between maintaining silence under the Fifth Amendment to avoid self-incrimination and potentially losing the civil matter. *See* ***id.***

A mere request that his civil trial be set after his criminal trial is not enough to warrant a continuance. The facts surrounding the two trials, however, are unique and do support another continuance. First, here, the same judge presided over both the civil and criminal cases; that one judge was able to set his own calendar for each trial. When the criminal trial resulted in a mistrial in December 2023, the civil case was already set for trial in January 2024. Because the same judge presided over the civil case, which involved many of the same parties, the criminal trial could have been moved to the set January 2024 trial date or a date shortly thereafter, and the civil trial could have been scheduled thereafter. As it was, the trial court held the criminal trial starting in late-April, less than three months later.

Taking this one simple step would have accomplished the two goals at issue: it would have preserved Schley's constitutional rights and avoided any prejudice to him, as well as provided Pelchat with a prompt trial in her civil action. There would have been no prejudice to Pelchat by delaying the civil trial for two to four months. Instead, the trial court dismissed out-of-hand Schley's legitimate concerns and denied his motion.

Further, notwithstanding whether the trial court's decision appeared reasonable, the lack of a logical rationale coupled with an inadequate explanation for its decision to reverse course

and no longer respect Schley's concerns, leads to the conclusion that this was an erroneous exercise of discretion. *See* ***State v. Hall***, 2002 WI App 108, ¶17, 255 Wis. 2d 662, 648 N.W.2d 41 (reasoning that a discretionary decision that was supported by minimal and inadequate explanation by a trial court "reflect[ed] 'decision-making'" but not "'a process of reasoning … based on a logical rationale,'" as is required for a proper exercise of discretion (citation omitted)). First, a deposition is not the same as live testimony, which, by its very nature, permits direct and vigorous cross-examination.[10] Next, Schley did not testify during the civil jury trial because he believed that testifying would have placed him at risk and "would have made him vulnerable at his criminal one." Schley did not testify at his subsequent criminal trial. The penalties in the criminal matter were significant. Schley faced a potential sentence of 37.5 years in prison, if convicted.[11] Finally, Schley was acquitted on both felony counts in his criminal trial. All these facts substantiate Schley's continued assertion of his constitutional right to avoid self-incrimination, and his rational determination that he was unable to testify at his civil trial without severely jeopardizing that right. Moreover, Schley should have been able to present the civil jury with the fact that he was ultimately acquitted in his criminal trial, which could have altered their perceptions as to his conduct.

"The Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, demands that '[n]o person ... shall be compelled in any

[10] *See* ***State v. Norman***, 2003 WI 72, ¶36, 262 Wis. 2d 506, 664 N.W.2d 97 (recognizing that in the context of the right to confrontation, "[t]he purpose of ... cross-examination is to test both the witness's memory and credibility in the presence of the fact finder."); ***Seifert v. Balink***, 2017 WI 2, ¶86, 372 Wis. 2d 525, 888 N.W.2d 816 (exalting the benefits of vigorous cross-examination, albeit in the context of expert testimony).

[11] We may, pursuant to WIS. STAT. § 902.01, take judicial notice of CCAP records in ***State v. Schley***, Green Lake County Case No. 2022CF96.

criminal case to be a witness against himself.'" ***State v. Langenbach***, 2001 WI App 222, ¶8, 247 Wis. 2d 933, 634 N.W.2d 916 (alterations in original; quoting U.S. CONST. amend. V). *See* WIS. CONST. art. 1, §8. In ***Langenbach,*** we explained why the privilege against self-incrimination is so important and when it actually applies:

> To sustain the Fifth Amendment privilege, "it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." "The privilege is not only intended to protect a defendant when his answers would lead to a conviction.... but is intended to protect a defendant when the defendant 'apprehends a *danger* from a direct answer.'" The United States Supreme Court has recognized that a legitimate danger is that of incarceration or the impending threat of the deprivation of one's liberty.

247 Wis. 2d 933, ¶13 (internal citations omitted).

Here, Schley clearly *apprehended* a danger from direct and/or cross-examination, and he legitimately feared a significant deprivation of his personal liberty: the risk of 37.5 years in prison. Despite that clear danger and significant fear, the court "chang[ed its] mind" and decided that one more continuance was a bridge too far for Pelchat without comparing that concern with the actual prejudice to Schley, if he was forced to testify in his criminal trial.

The majority focuses upon a perceived lack of specificity and declares that "Schley has not carried his burden of proving that he was prejudiced by the trial court's denial of his request for a continuance." "However, if [Schley], upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee." ***Hoffman v. United States***, 341 U.S. 479, 486 (1951). "To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive

answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." ***Id.*** at 486-87.

To require Schley, prior to the resolution of his criminal trial, to detail the precise questions that he feared to answer would have been to throw all of his protections away. Schley must merely show that he felt danger in having to answer questions about the accident and that his personal liberty was at stake. He did express those concerns and apprehensions. He need not have had to express more.

The trial court's rationalization that Schley could have testified at his civil trial if he had wished to do so is, thus, without a sound basis. Merely proclaiming that statement does not make it true. Schley found himself in a true constitutional dilemma and was forced to choose between two bad options: testify and risk the after-effects of cross-examination where prison is a real possibility in a subsequent criminal trial, or remain silent in a civil action where high money damages against him are likely. As anyone in that untenable position would do, he sought assistance from the court, upon the calendaring of his first criminal trial and after it resulted in mistrial, via a short continuance of his civil trial, and the court unreasonably denied that request.

For all of these reasons, this court should reverse the decision denying Schley a new civil trial and remand the matter back to the trial court. I respectfully dissent.

Samuel A. Christensen
Clerk of Court of Appeals