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DISTRICT IV

March 12, 2026

To:

Hon. Todd J. Hepler
Circuit Court Judge
Electronic Notice

Steven Roy
Electronic Notice

Julie Kayartz
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

Kathleen E. Wood
Electronic Notice

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

2025AP253-CR

State of Wisconsin v. Todd H. Mazerek (L.C. # 2020CF614)

Before Graham, P.J., Nashold, and Taylor, 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).

Todd Mazerek appeals a judgment of conviction, entered after a jury found him guilty of incest with a child, and a circuit court order denying his postconviction motion for reconsideration of its pretrial ruling that he was not entitled to the victim's confidential pupil records. Based on 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 We summarily affirm.

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

The State charged Mazerek with incest for having sexual intercourse with the victim, who was biologically related to Mazerek, starting when she was sixteen years old. According to the complaint, Mazerek had intercourse with the victim multiple times between the fall of 2011 and the spring of 2013.

Before trial, Mazerek moved for an in camera inspection of the victim's pupil records pursuant to WIS. STAT. § 118.125(2)(f), which provides that such records may "be used only for purposes of impeachment of any witness who has testified in the action." Mazerek's motion was purportedly based on his good faith belief that the records would contain evidence of the victim's dishonesty and untruthful character, among other things. The circuit court conducted an in camera review of the records, but did not provide them to Mazerek. The court stated that the records consisted of grades and attendance records and contained "nothing ... that would be exculpatory or useful in any way."

Then at trial, the prosecutor asked the victim about her life when she was sixteen, including how she was doing in school at that time. The victim responded that she was "an average student, like B, C." She then testified at length about getting in contact with Mazerek and the multiple incidents of sexual intercourse that followed. She explained that she stopped seeing Mazerek shortly after an incident in the spring of 2013 that led to her being expelled from school. She stated that she "wasn't doing very good in any of [her] classes at [that] point."

After other witnesses testified (including Mazerek's wife for the prosecution and Mazerek in his own defense), the jury found Mazerek guilty. The circuit court entered judgment on the verdict.

Almost two years later, Mazerek filed a postconviction motion asking the circuit court to reconsider its pretrial decision denying the production of the pupil records and to grant a new trial. In his motion, Mazerek did not argue that the circuit court’s pretrial decision was incorrect at the time the court made it; he instead argued that the records became relevant at trial, when the victim testified about her grades. He argued that the records could have been used to impeach her credibility and that nondisclosure of evidence affecting the witness’s credibility violates due process. The court denied the motion without a hearing, and Mazerek filed this appeal.

We review a circuit court’s denial of a motion for reconsideration for an erroneous exercise of discretion. *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853. We review a decision on whether to disclose a witness’s pupil records under the same standard. *S.P.A. v. Grinnell Mut. Reinsurance Co.*, 2011 WI App 31, ¶14, 332 Wis. 2d 134, 796 N.W.2d 874.

In *S.P.A.*, this court explained that a circuit court has a “gatekeeper role” with respect to pupil records under WIS. STAT. § 118.125(2)(f), and it may not allow their disclosure merely because they bear some general relevance to a claim. *Id.*, ¶12. Instead, “to protect the privacy of the pupil whose records are sought,” a court should “release[] only those records which may concern a specific witness’s credibility or competency.” *Id.* In the context of that civil appeal, we noted that “[e]very record, as long as it contained any information, could conceivably be relevant to some person’s credibility on some issue,” so the court must have some basis (in that case, pretrial deposition testimony) for determining that a record might be relevant to a specific witness’s credibility before making the decision to disclose the record. *Id.*, ¶9.

Here, Mazerek sought in camera review of the victim’s pupil records before she testified. The circuit court denied him access to the records, characterizing them as “simply ... grades and attendance records,” which the court did not view as “exculpatory or useful in any way” to Mazerek based on the grounds presented in his pretrial motion, which had to do with her general credibility. Mazerek’s postconviction motion for reconsideration of the court’s decision acknowledges that the court “applied the correct precedents” and does not assert that the court erred in making its pretrial decision “without knowing what the testimony may be.” Indeed, his appellate brief calls the pretrial decision “reasonable” and asserts that it only “bec[ame] erroneous in the course of ... trial,” at the point in time when the victim testified about her grades. In other words, Mazerek did not—and likely could not, under *S.P.A.*—argue that the court erroneously exercised its discretion in denying his pretrial motion. Instead, he argues that the circuit court should have changed its decision after his conviction based on the victim’s trial testimony.

However, at the time the victim testified about her grades at trial, Mazerek did not raise the issue with the circuit court. That is, he did not object to the testimony on this basis or otherwise seek the pupil records on the new ground that the grades reflected therein were potentially relevant to the victim’s credibility. He instead first raised this argument in support of obtaining the records almost two years later, in his postconviction motion for a new trial. The State argues that Mazerek forfeited any right to the records that accrued based on the trial testimony and that Mazerek cannot raise the issue now to obtain a new trial. We review the question of forfeiture de novo. *State v. Counihan*, 2020 WI 12, ¶23, 390 Wis. 2d 172, 938 N.W.2d 530.

“[F]orfeiture is the failure to make the timely assertion of a right.” *State v. Ndina*, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612. Among the “important reasons” why courts adhere to the rule prohibiting a party from later raising a forfeited issue is that a circuit court can address and correct an error that is timely brought to its attention, preventing parties from “sandbagging” by not raising an issue during trial and then alleging reversible error on appeal. *State v. Mercado*, 2021 WI 2, ¶35, 395 Wis. 2d 296, 953 N.W.2d 337. While some rights, such as the right to counsel and the right to refrain from self-incrimination, are so fundamental to a fair trial that a litigant must knowingly and expressly waive them, “[other] rights are forfeited when they are not claimed at trial.” *Ndina*, 315 Wis. 2d 653, ¶¶30-31.

Mazerek’s arguments that counsel was not required to seek the pupil records at trial in order to preserve the issue are not persuasive. He does not contend that a recognized exception to the forfeiture rule applies. *See id.*; *see also Mercado*, 395 Wis. 2d 296, ¶37 (noting plain error, the interest of justice, and ineffective assistance of counsel as the three general exceptions to the forfeiture rule). Instead, he suggests that *S.P.A.* “precludes mid-trial disclosure” because “counsel would have to remain on guard throughout the trial, halting the trial any time counsel thought that the undisclosed records might become relevant.” Mazerek’s argument is contrary to the policy underlying the forfeiture rule—it is the responsibility of counsel to timely raise issues that arise during the trial as they occur.

Contrary to Mazerek’s argument, nothing in *S.P.A.* prevents a party from seeking records mid-trial if they become relevant or prohibits a circuit court from granting access to such records mid-trial. The *S.P.A.* decision states only that it would be unreasonable for a court to have to wait until a witness testified at trial to disclose records if their relevance for impeachment purposes was already established by the witness’s pretrial deposition testimony. If that were the

law, the *S.P.A.* opinion states, “the court”—not counsel—“would have to dispatch its neutrality and remain on guard throughout the trial, halting it at every point it believed any of the ... records might be relevant to each witness’s credibility.” *S.P.A.*, 332 Wis. 2d 134, ¶8.

S.P.A. did not address a situation like Mazerek’s, in which the relevance of the pupil records was not established at the time he sought them before trial. Mazerek knew that the victim’s grades were in the records before trial, and he concedes that the circuit court’s decision not to disclose them at that point was reasonable; he was obligated to ask for the records again when he believed they became relevant by virtue of the victim’s trial testimony.

Mazerek also points to *State v. Coffee*, 2020 WI 1, 389 Wis. 2d 627, 937 N.W.2d 579, a case in which our supreme court determined that a defendant’s failure to object to “the State’s spontaneous presentation at sentencing of previously unknown, inaccurate information” did not constitute forfeiture because, at the time the information was presented, counsel did not know whether the information was accurate or the extent to which it was inaccurate. *Id.*, ¶¶25-26, 29. That situation is not analogous to the one here. A party would reasonably be expected to know that pupil records from a student’s school would contain the student’s grades, and here, Mazerek was explicitly informed before trial that the records at issue contained the victim’s grades.

We conclude that Mazerek’s failure to object to the victim’s trial testimony or to seek her pupil records on the basis of her grades being relevant for potential impeachment purposes amounts to forfeiture of the issue. While the forfeiture rule is one of judicial administration rather than a mandate, we conclude that ignoring the forfeiture rule in this case would not further the fair, efficient, and orderly administration of justice. *See id.*, ¶21. Mazerek has not brought a claim asserting that his trial counsel was ineffective in failing to raise this issue at trial. *See State*

v. Erickson, 227 Wis. 2d 758, 768, 596 N.W.2d 749 (1999) (declining to ignore forfeiture and analyzing the issue within the ineffective assistance of counsel framework).

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