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DISTRICT III

June 2, 2026

To:

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Circuit Court Judge
Electronic Notice

Frederick A. Bechtold
Electronic Notice

Cherie Norberg
Clerk of Circuit Court
Eau Claire County Courthouse
Electronic Notice

Angela L. Beranek
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1364-CR State of Wisconsin v. Sean R. Deardorff (L. C. No. 2016CT409)

Before Gill, J.¹

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).

Sean R. Deardorff appeals the judgment convicting him of operating a motor vehicle while intoxicated (OWI) and operating a motor vehicle with a prohibited alcohol concentration (PAC), both as a third offense.² 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. For the reasons that follow, we summarily affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

² At sentencing, the PAC charge (Count 2) was merged with the OWI charge (Count 1).

Deardorff was charged following incidents at Chester's Bar in Eau Claire County and a nearby Festival Foods. According to the complaint, police were dispatched to Festival Foods after receiving a report that a man wearing tan pants and a gray sweater was harassing two customers. This description matched one that law enforcement had received of a man who was acting disorderly at Chester's. When officers arrived at Festival Foods, they found Deardorff, wearing a gray sweater and tan pants, in the checkout lane yelling at an employee. Deardorff emitted a "very strong odor of intoxicants," was slurring his speech, and was swaying from side to side. Upon questioning, Deardorff told police that he had driven from Chester's to Festival Foods. Police had Deardorff perform field sobriety tests—during which officers observed multiple clues of intoxication—and take a preliminary breath test, which showed a blood alcohol concentration (BAC) of .173 g/100mL. A blood draw taken approximately two hours after Deardorff left Chester's showed a BAC of .169 g/100mL. Deardorff pled not guilty, and the case went to trial.

At trial, Deardorff presented a "blood curve" defense, arguing that while he may have been intoxicated when officers found him at Festival Foods and did have a prohibited BAC when tested, he was not intoxicated or operating a motor vehicle over the legal limit when he drove from Chester's to Festival Foods. Deardorff testified that he arrived at Chester's at about 7:00 p.m. on the night of the incident, he consumed only one mixed drink until just before 9:00 p.m., when he ordered and drank a large whiskey—which he described as a full tumbler containing about six to eight ounces of alcohol and no ice—along with two shots. Deardorff further testified that at around this time, the bartender asked him to leave. Deardorff testified that he left Chester's at about 9:08 p.m. and drove three to four blocks to Festival Foods. He explained that "the first order of business was to try to park myself under the surveillance cameras so I could provide evidence of the fact that I was sober when I walked in." According to Deardorff, it was only after arriving at Festival Foods that he began to feel the effects of the whiskey.

Deardorff's recollection of the evening differed from that of the other trial witnesses. For example, while Deardorff testified that the bartender at Chester's only asked him to leave one time, the bartender at Chester's testified that Deardorff was "[b]elligerent, derogatory, trying to start fights," and refused to leave despite the fact that she asked him to do so multiple times. Similarly, while Deardorff testified that he tried to strike up a "friendly" political conversation with two customers at Festival Foods, the two customers who encountered Deardorff testified that they recalled meeting "a very loud and angry man at the deli" who "was combative," "looking to start a fight," and who called them derogatory names. Deardorff's trial testimony also differed from what he initially told police on the night he was arrested, which was that he had "roughly about five drinks over the last five hours."³

While the above testimony was received without objection, Deardorff did object to the testimony and accompanying statement of the Festival Foods store manager. Defense counsel filed a motion to exclude the store manager as a trial witness. Although the manager had been listed as a witness very early in the discovery process, the State failed to turn over the store manager's email statement until two days before trial. The circuit court denied the motion and instead offered defense counsel a continuance so that he could meet with the manager ahead of trial. Defense counsel turned down the court's offer.

The store manager testified that on the night in question, she observed Deardorff yelling at and arguing with two women. The manager described Deardorff as "[l]oud, arguing, swearing, [and] belligerent" and she further testified that, based on her experience and observations, she thought Deardorff was drunk. The store manager called 911, and through her testimony, the transcript of the 911 call and the store's surveillance video—which showed

³ We pause to note that while Deardorff was consistent in reporting to the police the number of drinks he had, his story constantly changed regarding what types of drinks he had consumed.

Deardorff arriving at the Festival Foods lot, entering the store, and confronting two customers—were admitted.

The jury found Deardorff guilty of both the OWI and PAC charges. He now appeals.

On appeal, Deardorff argues that the circuit court erred by admitting the store manager's statement and by allowing her to testify at trial, given the State's alleged discovery violation. He seeks a new trial, at which the store manager should be barred from testifying.

We analyze alleged discovery violations in three steps, each of which poses a question of law that we review de novo. *State v. Rice*, 2008 WI App 10, ¶14, 307 Wis. 2d 335, 743 N.W.2d 517 (2007).

First, we decide whether the State failed to disclose information it was required to disclose under WIS. STAT. § 971.23(1). Next, we decide whether the State had good cause for any failure to disclose under § 971.23(1). Absent good cause, the undisclosed evidence must be excluded. However, if good cause exists, the circuit court may admit the evidence and grant other relief, such as a continuance. Finally, if evidence should have been excluded under the first two steps, we decide whether admission of the evidence was harmless.

Id. (citations omitted).

In the circumstances before us, we need not determine whether any discovery violation occurred because we conclude that any error was harmless. *See, e.g., State v. Nieves*, 2017 WI 69, ¶52, 376 Wis. 2d 300, 897 N.W.2d 363 (forgoing analysis of alleged evidentiary issue because alleged error was harmless). The overwhelming evidence presented at Deardorff's trial leads us to conclude that he would have been found guilty of the crimes for which he was convicted even if the circuit court had excluded the store manager's testimony.

This was not a case of mistaken identity. While only the store manager could positively identify Deardorff as the disorderly man who prompted the police call⁴ and provide the foundation to admit the surveillance video evidence, Deardorff never testified or argued that he was not the man who was kicked out of Chester's or who got into an altercation with customers at Festival Foods. Rather, he argued that the "heroic" amount of alcohol he consumed did not impair his driving or enter his bloodstream until after he got out of the car.

In addition, while the store manager's testimony and the accompanying surveillance video evidence did, as the State acknowledges, include "a very damaging portrayal of Deardorff's behavior at Festival Foods," it was by no means the only evidence giving rise to an inference that Deardorff was already intoxicated when he left Chester's and drove to Festival Foods. The bartender testified that Deardorff was "[b]elligerent, derogatory, [and] trying to start fights" before he left the bar; indeed, she testified that she asked Deardorff to leave Chester's multiple times before calling police. Deardorff showed multiple signs of intoxication on field sobriety tests, which were administered shortly after arriving at the store. Additionally, his BAC less than two hours after leaving Chester's was .169 g/100mL—a value the jury was allowed to use as evidence of Deardorff's BAC at the time he drove his car. *See* WIS JI—CRIMINAL 2663, 2660 (alcohol concentration in a defendant's blood sample taken within three hours of operating a motor vehicle is evidence of the defendant's BAC and/or impairment at the time of operating). Furthermore, Deardorff gave conflicting statements and testimony regarding what he drank, how much alcohol he drank, and when he drank it, and he made multiple comments from which a factfinder could infer that he was trying to cover up or defend unlawful behavior.

⁴ The two Festival Foods customers who testified at trial could not, at the time of trial, identify Deardorff as the man who accosted them. In the transcript of the video taken from the arresting officers' squad car, however, these customers do identify Deardorff and express concern for their safety around him.

Given the totality of the undisputed evidence, we conclude that any error in admitting the store manager's testimony was harmless.⁵

Upon the foregoing reasons,

IT IS ORDERED that the judgment is 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

⁵ We also note that Deardorff cites no support for his contention that the appropriate remedy for failure to disclose the store manager's statement when she had been listed as a witness early in discovery would be to bar her from testifying. The appropriate remedies pursuant to WIS. STAT. § 971.23(7m) would be either exclusion of the statement, granting Deardorff a recess or continuance (which Deardorff declined), or advising the jury of the untimely disclosure of the statement. *See Id.*