

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 11, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2024AP1330
2024AP1331
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2022TR525
2023TR213**

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE MATTER OF THE REFUSAL OF
CARTER TOWNSEND ANDREAE:**

PORTAGE COUNTY,

PLAINTIFF-RESPONDENT,

V.

CARTER TOWNSEND ANDREAE,

DEFENDANT-APPELLANT.

APPEALS from judgments of the circuit court for Portage County:
PATRICIA BAKER, Judge. *Affirmed.*

¶1 ZIEGLER, J.¹ In these consolidated appeals, Carter Andreae appeals a judgment revoking his operating privilege for unreasonably refusing to submit to a chemical test contrary to WIS. STAT. § 343.305(9)(a), and a judgment, entered after a bench trial, finding him guilty of operating a vehicle with a prohibited alcohol concentration, first offense.² On appeal, Andreae challenges the circuit court's denial of his three pre-trial motions. I reject Andreae's arguments and affirm both judgments.

BACKGROUND

¶2 The following facts are taken from the circuit court's written decision denying Andreae's motions after an evidentiary hearing, and from undisputed testimony implicitly credited by the court.

¶3 At approximately 2:00 a.m. on March 16, 2022, Portage County law enforcement received a call reporting that a vehicle may have been traveling in the wrong direction on an interstate highway before going into a ditch on the side of the highway. The location of the reported incident was in the Town of Hull, Portage County.

¶4 Lieutenant Gregory Bean of the Stevens Point Police Department was the first law enforcement officer to arrive at the scene. He found a Jeep that was covered in mud and tangled in fencing. The engine of the Jeep was still running. Bean spoke with the person in the driver's seat, who was later identified

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

² These appeals were consolidated for briefing and disposition by an order dated March 31, 2025. See WIS. STAT. RULE 809.10(3).

as Andreae. Andreae reported that he had picked up his passenger near the university and that they were on their way to Northern Wisconsin.

¶5 When talking with Andreae and his passenger, Bean “could smell a strong odor ... of alcohol coming from the Jeep.” Bean noticed that “Andreae had glossy and bloodshot eyes” and that his “speech appeared to be slurred.” Bean also saw alcoholic iced tea drinks inside the Jeep.

¶6 Bean stayed at the scene until he turned it over to officers from the Portage County Sheriff’s Office. Bean spoke with the first deputy to arrive and gave him “a real brief synopsis of what [Bean] had seen and heard up until that point.” According to Deputy Cody Potocki of the Portage County Sheriff’s Office, Bean told him that Bean saw Andreae in the driver’s seat of the Jeep with its engine running, that the Jeep was “kind of entangled in the interstate fence[,] and that [Bean] could smell the odor of intoxicants coming out of” the Jeep.

¶7 Bean did not write a report concurrently with the incident and testified that he did not initially do so because he was “just assisting” the sheriff’s deputies at the scene, and he “typically do[es] not write reports when [he is] just assisting other officers.” Bean first looked for the audiovisual recording from his body camera (the “body camera recording” or the “recording”) in October 2022, after he received a subpoena to testify at the scheduled motion hearing. At that point the recording had already been destroyed pursuant to the Stevens Point Police Department’s policy of deleting recordings after 120 days passed without any request for the recording.

¶8 Back at the scene, Potocki observed open cans of alcoholic beverages in the Jeep. Potocki “could smell the moderate odor of alcohol coming from” Andreae and observed that Andreae’s “eyes were glossy,” that his “speech

was slurred, slow, and deliberate,” and that “he was having a difficult time maneuvering [around] the ditch area and remaining steady on his feet.”

¶9 Andreae told Potocki that he had been driving the Jeep, and he recounted some of the details of the accident. Andreae stated that he had been driving on a frontage road, and drove “over the hill, through the swamp, and into the interstate fence.” Potocki determined that the frontage road Andreae had been driving on was Johnson Drive.

¶10 Potocki observed that Andreae had a small bump on his forehead, and Andreae told Potocki that he thought he had struck his head in the accident. Officers asked Andreae if he wanted medical attention several times, and Andreae declined. Potocki did not call for emergency medical services.

¶11 After conducting standardized field sobriety testing and observing multiple clues of impairment, Potocki arrested Andreae for operating while under the influence of an intoxicant (OWI). Andreae was then taken to a nearby hospital, and, after Potocki read him the Informing the Accused form, Andreae refused to submit to a chemical test of his blood.

¶12 Subsequently, Potocki prepared and submitted an affidavit to the circuit court requesting a search warrant to obtain a sample of Andreae’s blood for chemical testing. In the affidavit, Potocki averred, among other things, that Andreae “was observed to drive/operate the vehicle by a police officer,” and that Andreae “admitted to driving on [the] frontage road, driving over a hill, through the swamp[,], and into the interstate fence.” When questioned about the accuracy of these statements during the motion hearing, Potocki testified that the first statement was based on the information that Bean had provided, as Andreae was

no longer in the Jeep when Potocki arrived at the scene, and the second statement was based on Potocki's own conversation with Andreae at the scene.

¶13 Potocki obtained the search warrant, and Andreae's blood was drawn. Then, back at the sheriff's office at the end of his shift, Potocki attempted to upload the audiovisual recording from his squad car (the "squad car recording" or the "recording"), which would have captured the field sobriety testing and some of his conversations with Andreae. However, rather than selecting the "upload" button, Potocki accidentally selected the "format" button, which resulted in the squad car recording being deleted. Potocki testified that "it was inadvertent and human error on [his] part."

¶14 At the beginning of his shift the next day, Potocki wrote a report documenting his investigation and Andreae's arrest. Potocki's report does not specifically mention that Bean told Potocki that Bean observed Andreae operating the Jeep. The report does mention the accidental deletion of the squad car recording.

¶15 Portage County filed a notice of intent to revoke Andreae's operating privilege as a result of his refusal to consent to chemical testing, and also issued a citation for operating a motor vehicle with a prohibited alcohol concentration, first offense.

¶16 Andreae filed three pre-trial motions. One motion asked the circuit court to suppress evidence on the ground that Potocki lacked probable cause to arrest Andreae for an OWI-related offense. The second motion was a **Franks-Mann** motion, which asked the court to suppress evidence obtained as a result of

the search warrant for the blood draw.³ This motion primarily asserted that Potocki’s averment that an officer observed Andreae “driv[ing]/operat[ing] the vehicle” was false and that, when that averment was excised from the warrant application, the application did not establish probable cause to support the issuance of a warrant for a blood draw. The third motion was a spoliation motion, which argued that the officers failed to preserve the body camera and squad car recordings “in flagrant disregard of the judicial process” and asked the court to dismiss the cases on that basis, or alternatively, to prohibit Portage County from presenting evidence regarding events that would have been depicted in the destroyed recordings.

¶17 The circuit court held an evidentiary hearing on all three motions, with Bean and Potocki as the sole witnesses. With respect to the motion based on a purported absence of probable cause to arrest, the court determined that there was ample probable cause to arrest Andreae for an OWI-related offense. In so doing, the court did not specifically address Andreae’s argument that Potocki should have ruled out a head injury as a potential source of some of the signs of impairment that Potocki observed.

¶18 Regarding the *Franks-Mann* motion, the circuit court determined that the affidavit did not contain false information. As noted, the motion was primarily based on the averment in Potocki’s affidavit that Andreae “was observed to drive/operate the vehicle by a police officer.” The court credited Bean’s testimony that he had observed Andreae in the driver’s seat of the Jeep with the

³ See *Franks v. Delaware*, 438 U.S. 154 (1978); *State v. Mann*, 123 Wis. 2d 375, 367 N.W.2d 209 (1985).

engine still running. The court further explained that “[t]he fact that the specific name of the officer who observed [Andreae] driving is omitted [from the affidavit] is irrelevant.”

¶19 Finally, on the spoliation motion, the circuit court determined that the destruction of the recordings from Bean’s body camera and Potocki’s squad car was not the result of a “flagrant” or “knowing disregard of the judicial process.” As for Bean’s body camera recording, the court found that its destruction was the result of the passage of time and the retention policy of the Stevens Point Police Department, and that “[n]othing about ... Bean’s actions are egregious or demonstrate intent to disregard the judicial process.” With respect to Potocki’s squad car recording, the court credited Potocki’s testimony that the deletion was accidental.

¶20 After denying all three motions in a written decision, the circuit court proceeded to hold a refusal hearing and a separate bench trial for the prohibited alcohol concentration citation. At the refusal hearing, the court found that there was a refusal and that the refusal was unreasonable under the circumstances, and it revoked Andreae’s operating privilege. With respect to the prohibited alcohol concentration citation, the court found Andreae guilty “with a blood alcohol content of .226.” Andreae appeals.

DISCUSSION

¶21 In these appeals, Andreae challenges the circuit court’s denial of his three pre-trial motions. I address Andreae’s arguments on each of his motions in turn.

I. The Probable Cause Motion

¶22 Andreae first argues that Potocki lacked probable cause to arrest him for an OWI-related offense and that, accordingly, all evidence obtained as a result of the arrest should be suppressed. “This court analyzes the grant or denial of a suppression motion under a two-part standard of review: [I] uphold the circuit court’s findings of fact unless they are clearly erroneous, and [I] independently review whether those facts warrant suppression.” *State v. Adell*, 2021 WI App 72, ¶14, 399 Wis. 2d 399, 966 N.W.2d 115. Whether the facts as found by the circuit court meet the standard for probable cause for an arrest is a question of law that this court reviews de novo. *See id.*

¶23 Probable cause to arrest for an OWI-related offense “refers to that quantum of evidence within the arresting officer’s knowledge at the time of the arrest that would lead a reasonable law enforcement officer to believe that the defendant was operating a motor vehicle while under the influence of an intoxicant.” *State v. Lange*, 2009 WI 49, ¶19, 317 Wis. 2d 383, 766 N.W.2d 551. “Probable cause is a ‘flexible, common-sense measure of the plausibility of particular conclusions about human behavior,’” and the existence of probable cause “must be assessed on a case-by-case basis, looking at the totality of the circumstances.” *Id.*, ¶20 (quoted source omitted).

¶24 Here, the circuit court credited the officers’ testimony that they observed Andreae to have “glossy” eyes, slurred speech, trouble with balance, and a moderate odor of intoxicants, and that there were alcoholic beverages in the Jeep. The court also found that Andreae “failed standardized field sobriety tests.” These are all “common indicators of intoxication” that can be used to establish probable cause that a person is intoxicated. *See id.*, ¶21 (identifying odors of

intoxicants, slurred speech, difficulty balancing, empty cans or bottles, and suggestive field testing as among the “common indicators of intoxication”). Here, in addition to those indicators, the court found that Andreae admitted to driving over a hill, through a swamp, and into a fence at bar time. These actions also support a finding of probable cause. See *id.*, ¶32 (driving at bar time can support a finding of probable cause); *State v. Kennedy*, 2014 WI 132, ¶22, 359 Wis. 2d 454, 856 N.W.2d 834 (collecting cases in which vehicle accidents supported a finding of probable cause).

¶25 Andreae does not argue that the circuit court’s factual findings are clearly erroneous, and my review of the testimony from the motion hearing satisfies me that they are not. I conclude that the facts as found by the court, set forth in the preceding paragraph, establish probable cause to arrest.

¶26 Andreae argues that some of these indicators, such as difficulty with speech and balance, could be attributed to a head injury that Andreae might have suffered as a result of the accident. Andreae further argues that “a reasonable officer in Potocki’s position would have factored [in] the possibility of a head injury as a potential cause for the alleged speech and balance issues, as well as the other alleged indicia of impairment,” and that “any possibility of [a] concussion or other balance distorting injuries should have been ruled out prior to the ... arrest.” This argument is contrary to established law. The probable cause inquiry “deals with probabilities, not hard certainties,” and officers are not required to rule out innocent explanations before making an arrest. *State v. Nieves*, 2007 WI App 189, ¶14, 304 Wis. 2d 182, 738 N.W.2d 125 (“an officer is not required to draw a reasonable inference that favors innocence when there also is a reasonable inference that favors probable cause”).

¶27 Extending this argument, Andreae argues that “law enforcement cannot simply ignore facts that do not support guilt,” because “[t]he determination of probable cause to arrest is always a totality of the circumstances analysis,” and that “Potocki was required to consider the reality of Andreae’s head injury.” I need not determine what exactly Potocki considered, because on my de novo review, I conclude that the totality of the circumstances as found by the circuit court with consideration of the potential head injury established probable cause that Andreae had operated a vehicle while under the influence of an intoxicant. *See State v. Riddle*, 192 Wis. 2d 470, 476, 531 N.W.2d 408 (Ct. App. 1995) (“[I]n determining whether probable cause existed, [I] do not look to the officer’s subjective beliefs, but apply an objective standard based upon the circumstances as they were at the time of the arrest.”).

¶28 Andreae asserts that “the accident should not have been counted in ... Potocki’s probable cause analysis,” but he does not develop this assertion into an argument supported by legal authority. *See Borsellino v. DNR*, 2000 WI App 27, ¶11, 232 Wis. 2d 430, 606 N.W.2d 255 (This court need “not consider arguments unsupported by reference to legal authority.”). Moreover, this assertion is contrary to established law, as set forth above. *See Kennedy*, 359 Wis. 2d 454, ¶22 (explaining that a motor vehicle accident, in combination with other indicators, can lend support to a finding of probable cause for OWI).

¶29 Andreae also criticizes the officers for not calling for emergency medical services despite Andreae’s rejection of offers for medical care. However, this has no bearing on the probable cause inquiry, and I have explained above why officers were not required to rule out Andreae’s potential head injury when determining whether probable cause existed.

II. The *Franks-Mann* Motion

¶30 Andreae next argues that the circuit court should have excised certain false statements from Potocki’s affidavit in support of the request for a search warrant to obtain a sample of Andreae’s blood for chemical testing, and that the evidence obtained as a result of that warrant should be suppressed. I uphold the court’s findings of fact unless clearly erroneous, and I review de novo the court’s denial of the *Franks-Mann* motion to suppress. See *State v. Jones*, 2002 WI App 196, ¶25, 257 Wis. 2d 319, 651 N.W.2d 305; see also *State v. Eason*, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625.

¶31 At a *Franks-Mann* hearing, the defendant must establish by a preponderance of the evidence that the affiant intentionally, or with reckless disregard for the truth, included false information in the search warrant affidavit. See *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978); see also *State v. Mann*, 123 Wis. 2d 375, 387-89, 367 N.W.2d 209 (1985) (explaining that intent or recklessness are required findings for excluding false statements in search warrant affidavits). If the defendant meets that burden, the court must “set [the false information] to one side,” and determine whether “the affidavit’s remaining content is [s]ufficient to establish probable cause.” *Franks*, 438 U.S. at 156. If the remaining content is insufficient, “the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.” *Id.*

¶32 “[T]o prove reckless disregard for the truth, the defendant must prove that the affiant in fact entertained serious doubts as to the truth of the [averments] or had obvious reasons to doubt the veracity of the [averments].” *State v. Anderson*, 138 Wis. 2d 451, 463, 406 N.W.2d 398 (1987). Averments

that were made “innocently or negligently [are] insufficient to have the challenged [averment] removed from the affidavit.” *Id.*; **Franks**, 438 U.S. at 171.

¶33 Andreae first argues that the averment in the affidavit that a police officer observed him operating the vehicle is false. He argues that the circuit court erred in finding that Bean told Potocki that he observed Andreae in the driver’s seat of the Jeep with the engine running. Andreae asserts that the testimony of Potocki and Bean on this matter is unreliable because: neither of the officers included this information in their reports, the recordings of the officers’ conversation were destroyed, and the officers only testified to this conversation after Andreae filed his **Franks-Mann** motion. Andreae essentially asks that this court weigh the witnesses’ credibility differently and make different findings, but this is not my role. See **Noll v. Dimiceli’s, Inc.**, 115 Wis. 2d 641, 643-44, 340 N.W.2d 575 (Ct. App. 1983) (explaining that this court will not set aside a fact found by the circuit court unless, after accepting all credibility determinations made and reasonable inferences drawn by the court, the great weight and clear preponderance of the evidence support a contrary finding). I conclude that the court’s findings that Bean observed Andreae in the driver’s seat with the engine running, and that Bean told Potocki this information, are not clearly erroneous.

¶34 Moreover, “operate,” as defined by the pertinent statute, “means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.” WIS. STAT. § 346.63(3)(b). This court has explained that “[o]peration’ of a vehicle occurs either when a defendant starts the motor and/or leaves it running. The possibility of danger exists in either case.” **Milwaukee County v. Proegler**, 95 Wis. 2d 614, 628-29, 291 N.W.2d 608 (Ct. App. 1980). But see **Village of Cross Plains v. Haanstad**, 2006 WI 16, ¶¶3-8, 16, 19-21, 288 Wis. 2d 573, 709 N.W.2d 447 (distinguishing **Proegler** because in

Haanstad, while the defendant was found sitting in the driver’s seat with the engine running, it was undisputed that the defendant did not drive the vehicle or “‘activate[]’ or ‘manipulate[]’ any control in the vehicle that is necessary to put [it] in motion”). Because I accept the circuit court’s findings that Bean observed Andreae in the driver’s seat with the engine running and that Andreae told Potocki that Andreae had been driving, I conclude that Potocki did not “ha[ve] obvious reasons to doubt the veracity” of the averment that an officer observed Andreae operating the vehicle. See **Anderson**, 138 Wis. 2d at 463.

¶35 Andreae next argues that, even if I accept the circuit court’s finding that Bean told Potocki that he saw Andreae operating the Jeep, the affidavit still contained false statements. Specifically, Andreae argues that the averments that an officer observed Andreae operating the vehicle, and that Andreae “did drive or operate a motor vehicle on Johnson Dr[ive],” taken together, were intended to mislead the court to believe that an officer observed Andreae operating the Jeep on Johnson Drive. It is undisputed that no officer observed Andreae operating the Jeep on Johnson Drive, but the affidavit does not contain such an averment, and there is nothing in the record that would cause the circuit court to conclude that the two averments identified by Andreae were intended to mislead the court. The affidavit does contain an averment that Andreae admitted to driving the Jeep on the “frontage road,” and the court credited Potocki’s testimony that Andreae admitted to driving on Johnson Drive, which Andreae does not dispute is the same as the frontage road. Accordingly, the averment that Andreae operated the vehicle on Johnson Drive is supported by the finding that he admitted to doing so, and is not dependent on an officer’s observation. Accepting the court’s factual findings as not clearly erroneous, I conclude that the affidavit does not contain false statements.

¶36 Andreae also argues that because “proof of operating a motor vehicle on a public highway is required under the circumstances, [Potocki’s] false statements and omissions were at the very least recklessly made if not deliberately false to bolster his chances of persuading a judge to issue a search warrant.” He further argues that, with the false or misleading statements excised from the affidavit, the remaining averments do not establish probable cause that he operated a vehicle on a public highway. As explained above, there were no false statements included in the affidavit. In addition, Andreae does not develop an argument supported by legal authority that his admission to operating the Jeep on the frontage road was not sufficient to constitute probable cause that he operated a vehicle on a highway. See WIS. STAT. § 346.61 (OWI statutes are “applicable upon highways” and “all premises held out to the public for use of their motor vehicles”); see also WIS. STAT. § 340.01(22) (“‘Highway’ means all public ways and thoroughfares and bridges on the same.”). Accordingly, I do not further consider these arguments. See *Borsellino*, 232 Wis. 2d 430, ¶11; *ABKA Ltd. P’ship v. Board of Rev.*, 231 Wis. 2d 328, 349 n.9, 603 N.W.2d 217 (1999) (this court need not address undeveloped arguments).

III. The Spoliation Motion

¶37 Finally, Andreae argues that the circuit court erred when it did not either dismiss the cases or exclude evidence regarding Bean’s and Potocki’s observations of and interactions with Andreae as a sanction for the destruction of the body camera and squad car recordings.

¶38 The decisions of whether to impose sanctions for the destruction or spoliation of evidence and, if so, what sanctions to impose, are committed to the discretion of the circuit court. *Garfoot v. Fireman’s Fund Ins. Co.*, 228 Wis. 2d

707, 717, 599 N.W.2d 411 (Ct. App. 1999). This court will affirm the circuit court’s discretionary rulings if the court “examined the relevant facts, applied a proper standard of law, and, utilizing a demonstratively rational process, reached a conclusion that a reasonable judge could reach.” *Id.*

¶39 “The primary purpose behind the doctrine of spoliation is two-fold: (1) to uphold the judicial system’s truth-seeking function; and (2) to deter parties from destroying evidence.” *Morrison v. Rankin*, 2007 WI App 186, ¶16, 305 Wis. 2d 240, 738 N.W.2d 588.⁴ “Wisconsin courts have recognized the following potential remedies for evidence spoliation: (1) discovery sanctions; (2) monetary sanctions; (3) exclusion of evidence; (4) reading the spoliation inference instruction to the jury; and (5) dismissal of one or more claims.” *Mueller v. Bull’s Eye Sport Shop, LLC*, 2021 WI App 34, ¶20, 398 Wis. 2d 329, 961 N.W.2d 112. “But, ‘[n]ot all destruction, alteration, or loss of evidence qualifies as spoliation’ or requires the imposition of a sanction.” *Id.*, ¶19 (quoted source omitted). In addition, “dismissal as a sanction for spoliation is appropriate only when the party in control of the evidence acted egregiously in destroying that evidence. Egregious behavior is ‘a conscious attempt to affect the outcome of the litigation or a flagrant, knowing disregard of the judicial process.’” *American Fam. Mut.*

⁴ Portage County cites case law setting forth the standards for spoliation in a criminal matter, and Andreae does not argue that he could satisfy those standards. Andreae bases his argument on the civil spoliation doctrine, and I assume without deciding that that doctrine applies here because a first-offense OWI-related violation and a refusal to submit to a warrantless blood draw are both civil offenses. See *State v. Braunschweig*, 2018 WI 113, ¶15, 384 Wis. 2d 742, 921 N.W.2d 199 (first-offense OWI results in civil penalties); WIS. STAT. § 346.65(2)(am); *State v. Sparby-Duncan*, 2026 WI App 9, ¶¶3, 28, 419 Wis. 2d 715, 32 N.W.3d 427 (refusal results in civil penalties); *State v. Krause*, 2006 WI App 43, ¶9, 289 Wis. 2d 573, 712 N.W.2d 67 (“in a refusal hearing, rules of civil, not criminal, procedure apply”).

Ins. Co. v. Golke, 2009 WI 81, ¶42, 319 Wis. 2d 397, 768 N.W.2d 729 (citation and quoted source omitted).

¶40 Here, the circuit court found that Bean’s body camera recording “was discarded as part of a standard policy of the department” and that Bean followed normal procedure when he did not retain the recording or write a report after he turned the scene over to the sheriff’s office. The court credited Bean’s testimony that he attempted to find the recording after he received a subpoena for the motion hearing and realized that the recording might be relevant to the litigation, but that it was already deleted at that time. The court also found that Potocki’s destruction of his squad car recording was accidental. These factual findings are not clearly erroneous. Accordingly, the court concluded that there was no “egregious” conduct by either Bean and the Stevens Point Police Department or Potocki. The court also explained that it was not imposing other sanctions because “[t]he fact that video was destroyed provides an opportunity for robust cross-examination as Deputy Potocki and Lieut[enant] Bean are now required to rely upon their independent recollection and reports without the assistance of actual ... video.” The court “envision[ed] lively cross-examination at trial that will be aimed at getting to the truth of what occurred without the assistance of recordings.”

¶41 The circuit court’s decision not to dismiss the case was a proper exercise of discretion. It reasonably determined that the destruction of the body camera and squad car recordings was not done with ““a conscious attempt to affect the outcome of the litigation or a flagrant, knowing disregard of the judicial process.”” See *id.* (quoted source omitted). Because the destruction was not egregious, dismissal was not an appropriate sanction. See *id.* The court also properly exercised its discretion in declining to impose other sanctions, based on

its findings that the deletion of the recordings was accidental or in accordance with policy and that the absence of recordings provided an opportunity for “robust” cross-examination. In other words, the court implicitly concluded that exclusion of testimony related to what would have been depicted in the recordings would not serve the purposes behind the doctrine of spoliation. See **Morrison**, 305 Wis. 2d 240, ¶16. Accordingly, the court “examined the relevant facts, applied a proper standard of law, and, utilizing a demonstratively rational process, reached a conclusion that a reasonable [court] could reach.” See **Garfoot**, 228 Wis. 2d at 717.

¶42 Andreae argues that he was prejudiced by the destruction of the recordings. However, he does not develop an argument supported by legal authority that any prejudice requires the circuit court to impose sanctions on Portage County, and I consider this argument no further. See **Borsellino**, 232 Wis. 2d 430, ¶11.

¶43 Andreae also argues that the circuit court erred in not dismissing the cases because the destruction of the recordings “was the result of both a flagrant knowing disregard of the judicial process and blatant negligence.” Specifically, he asserts that Bean should have known that his body camera recording would be relevant to the case, and the fact that the Stevens Point Police Department has a policy of deleting recordings after 120 days shows that the deletion was intentional. I have explained above that the court did not err in concluding that the destruction was not egregious, which is required for dismissal.

¶44 Finally, Andreae asks that, if I conclude that dismissal is not an appropriate sanction, in the alternative, I remand to the circuit court to exclude all testimony “involving what would have been captured on the destroyed audio and

visual evidence.” Andreae asserts that “[t]he prejudice against [him], as well as the circumstances of the evidence’s destruction, provide ample reason why this [c]ourt should exclude that evidence.” This is nothing more than a request that this court exercise the circuit court’s reasonably exercised discretion differently, which I may not do.

CONCLUSION

¶45 For the reasons stated above, I affirm.

By the Court.—Judgments affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

