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DISTRICT II

October 21, 2026

To:

Hon. Gerad T. Dougvillo
Circuit Court Judge
Electronic Notice

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

Sarah Burgundy
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Orlando D. Jones #686014
Fox Lake Correctional Institution
P.O. Box 200
Fox Lake, WI 53933

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

2025AP743-CR State of Wisconsin v. Orlando D. Jones (L.C. #2021CF1484)

Before Lazar, P.J., Gundrum, and Grogan, 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).

Orlando D. Jones appeals the judgment of the trial court, by challenging its pretrial ruling that the rape shield statute did not apply to bar evidence of the victim's sexual orientation.[1] *See* WIS. STAT. § 972.112(a). Based upon our review of the briefs and Record, we conclude at

[1] Wisconsin's rape shield law, excludes any evidence of a complainant's prior sexual conduct, with few exceptions. WIS. STAT. § 972.11(2)(b) (2023-24). The definition of "sexual conduct" means any prior "conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual intercourse or sexual contact, use of contraceptives, living arrangement and life-style." Sec. 972.11(2)(a).

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

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. For the following reasons, we affirm.

In November 2021, Jones was charged with both third-degree and fourth-degree sexual assault. The charges stem from a sexual assault that took place in October 2020 at which the victim alleged Jones twice sexually assaulted her.

The jury heard Jones's inconsistent recorded statements to the police. Jones initially denied having intercourse with the victim. To support his denial, he repeatedly told the interviewing officer that the victim "was a lesbian and that she only liked women" and "would never let that happen, or she would never let me do this to her[.]" At least three times, Jones denied putting his penis inside the victim. Jones later changed his statement. He acknowledged having intercourse with the victim but claimed it was consensual. The State also elicited testimony from the victim that she was a lesbian.

The jury found Jones guilty of third-degree sexual assault. Jones appeals.

Jones argues that the trial court erred by ruling that the rape shield statute did not bar the testimony regarding the victim's sexual orientation, and that statements describing her sexual orientation were highly prejudicial against Jones. "To determine whether an error is harmless, this court inquires whether the State can prove 'beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error[.]'" ***State v. Jorgensen***, 2008 WI 60, ¶23, 310 Wis. 2d 138, 754 N.W.2d 77 (citation omitted). In this inquiry, we consider, among other things, the importance of the challenged evidence, the nature of the defense, and the nature of the State's case. *See* ***id.***

Jones's own account to the police gave the jury a substantial basis upon which to assess his credibility. His statements were admissible against him as statements against interest. WIS. STAT. § 908.045(4); *see* WIS. STAT. § 908.01(4)(b)(1). His reference to the victim's sexual orientation was part of his initial statement and provided his basis for denying sexual intercourse. His later admission that sexual intercourse occurred, followed by his concession that he lied to the police, exposed the prior inconsistent statements without depending on separate testimony from the victim's family about her sexual orientation. The victim's testimony that she was a lesbian was simply cumulative of Jones's own statements about her sexual orientation.

The State's case also rested on evidence independent of the victim's sexual orientation. The victim agreed that she did not give Jones "any sort of indication [she] was interested in anything like this with him[,]" was awoken twice to his sexual contact, and did not consent to the intercourse. Jones acknowledged approaching her as she lay beside her niece and nephew, who were sleeping next to her; returning after checking that his girlfriend was asleep; and then having intercourse with the victim in the living room. The jury also heard about Jones's later text messages to the victim seeking further sexual contact and his admission that he falsely told the victim that one explicit message was meant for someone else. The central dispute here is consent. The jury could have resolved that issue from the victim's and Jones's testimony and from Jones's inconsistent statements. The jury did not need to rely on the notion that the victim's sexual orientation was proof that the victim did not consent.

In light of the evidence admitted at trial, we are satisfied beyond a reasonable doubt that a rational jury would have reached the same verdict without the additional testimony that the victim allegedly identified as a lesbian. Given the nature of the defense and the State's case, we

need not decide whether the sexual orientation testimony fell within the rape shield statute or whether the trial court erred in admitting it during the trial.

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to 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