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DISTRICT IV

September 25, 2025

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

2024AP990-CR

State of Wisconsin v. Antonio Shanklin (L.C. # 2016CF2181)

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).

Antonio Shanklin appeals a judgment of conviction. He argues that the circuit court erred by denying his motion to dismiss the criminal charges against him because the State failed to preserve apparently exculpatory evidence. 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 We conclude that Shanklin had comparable evidence available to him and, therefore, we affirm.

After a jury trial, Shanklin was convicted of one count of repeated sexual assault of the same child and one count of bail jumping. Before trial, he moved to dismiss the charges on the ground that the State failed to preserve photographs of the victim's genitalia that were taken during a forensic nurse examination. The circuit court held a nonevidentiary hearing, heard argument, and concluded that the photographs were not exculpatory. Although no evidence was taken at that hearing, Shanklin's motion included certain documents as attachments, including the notes of the nurse examiner. The parties and the court appear to have used that material as the factual basis for their discussion at the hearing, along with other information provided orally by counsel.

On appeal, Shanklin argues that the photographs were apparently exculpatory. The applicable test is whether: (1) the evidence destroyed possessed an exculpatory value that was apparent to those who had custody of the evidence before the evidence was destroyed, and (2) the defendant was unable to obtain comparable evidence by other reasonably available means. *State v. Munford*, 2010 WI App 168, ¶21, 330 Wis. 2d 575, 794 N.W.2d 264. We accept the circuit court's findings of fact unless they are clearly erroneous, but we independently review whether the facts gave rise to a due process violation. *State v. Luedtke*, 2015 WI 42, ¶37, 362 Wis. 2d 1, 863 N.W.2d 592.

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

For purposes of this appeal, we assume, without deciding, that the missing photographs satisfied the first part of the test, that is, that they had an apparent exculpatory value. We focus on the second part of the test and conclude that Shanklin was able to obtain comparable evidence.

As argued by Shanklin and assumed in this order, the exculpatory value of the missing photographs was that they showed no injury to the exterior of the victim's genitalia. In Shanklin's opening brief, he anticipates that the State will argue that the trial testimony of the nurse examiner was comparable to the missing photographs, in that the nurse testified that she observed no injuries to the victim's genitalia, and that the photographs did not show any injuries. Shanklin argues that this testimony was not comparable to photographs "that conclusively demonstrate" a lack of injuries.

The State, as predicted, responds that the photographs would add nothing to the nurse's testimony, and would actually be inferior to that testimony, because the nurse's opinion was backed by her expert knowledge of what potential injuries look like, which the jury itself would not have when viewing the photographs.

We agree with the State. There may, of course, be situations in which photographs contain more detail than a verbal description of whatever is shown in the photographs, in a way that is legally meaningful. However, Shanklin has not persuasively explained how this is such a situation. While it is true that the photographs here would have contained more physical detail, he does not explain how that detail matters for the legal purposes of this case. For the purpose of exculpatory value, what mattered to the defense was strong evidence that no injuries were present. Such evidence was provided by the nurse's testimony which, as the State points out,

was backed by expertise that the jury would have lacked in viewing the photographs. The nurse's testimony was comparable to the photographs for this purpose.

For these reasons, we conclude that Shanklin's right to due process was not violated by the loss of the photographs.

IT IS ORDERED that the judgment appealed is summarily affirmed under 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