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DISTRICT III

December 16, 2025

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

2024AP689-CRNM State of Wisconsin v. Tylor J. Schoch (L. C. No. 2021CF338)

Before Stark, P.J., Hruz, and Lazar, 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).

Tylor J. Schoch appeals from a judgment of conviction for second-degree sexual assault, false imprisonment, two counts of felony bail jumping, and one count of misdemeanor bail jumping. Schoch's appellate counsel, Carlos Bailey, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2023-24).[1] Schoch has filed a response to the no-merit report, arguing that his trial attorneys were constitutionally

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

ineffective in three respects, and appellate counsel has filed a supplemental no-merit report. Upon our independent review of the record, the no-merit report, Schoch's response, and the supplemental no-merit report, we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The charges against Schoch arose from allegations that he sexually assaulted the victim, Janet,[2] with use of force and restrained Janet's movement during the assault. The criminal complaint further alleged that, at the time of the assault, Schoch was released on bond in one misdemeanor case and two felony cases and that his bond conditions in all three cases prohibited him from committing additional crimes.

The case proceeded to a three-day jury trial. At trial, Janet testified that she met Schoch through "Facebook dating," and they mainly communicated by text message, but they also met in person on three occasions. They met in person for the first time at Schoch's apartment in Little Chute, Wisconsin, and had consensual sex. Janet testified that there was nothing out of the ordinary about that encounter, and the sex did not involve the use of restraints. Janet later went to Schoch's apartment in Little Chute a second time, and they again had consensual sex that did not involve the use of restraints.

Janet testified that after her second encounter with Schoch, they "didn't see each other for a little while," but they texted occasionally. In mid-March of 2021, Janet contacted Schoch by

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim's name.

text after learning that she had tested positive for chlamydia. They continued to text, and they ultimately made plans for Janet to meet Schoch at his new apartment in Kimberly, Wisconsin, on March 24, 2021.

Janet testified that she arrived at Schoch's new apartment at around 8:00 p.m. on March 24, and Schoch "wanted to show [her] around" because she had never been there before. They went to a basement storage area, and she helped Schoch "put a screw and a hinge on a door." Later on, they started kissing and being intimate in the living room, which was consensual. At some point, however, they moved into the bedroom and the encounter became nonconsensual. Janet testified that Schoch became aggressive and pushed her onto the bed on her back. She told Schoch that she needed a break, and he then flipped her over and told her that he was going to "take [her] ass." Janet told Schoch she did not "want to do that," but he stated he was going to do it anyway. Schoch then engaged in forcible, nonconsensual anal intercourse with Janet, while she screamed "no" and asked him to stop.

Janet testified that Schoch then flipped her over, scooted her "to the front of the bed," and placed her legs through ropes that held her legs up in the air. She testified that she had never seen the ropes before. The State introduced the ropes into evidence at trial and also introduced photographs showing the ropes mounted to the wall above a bed in Schoch's apartment.

Janet testified that while her legs were in the ropes, Schoch put his penis in her mouth and vagina. Again, Janet testified that she said "no" and told Schoch to stop. During the assault, Schoch told Janet that she was "going to take it and like it" and that she was "daddy's little slut" and would "always be a slut." The assault ended when Schoch ejaculated in Janet's mouth.

Janet testified that Schoch then took her feet out of the ropes, changed the sheets on the bed, and asked her to cuddle with him. Janet told Schoch she "couldn't believe he just did that" and left his apartment, leaving her boots and a "Yeti cup" behind. Janet testified that she was in shock. She went to work and then went to a "volunteer job," after which she went to the hospital and reported the assault. Janet acknowledged that after she finished work that day, but before she went to the hospital, she texted Schoch about obtaining the boots and cup that she had left at his apartment. Schoch did not respond to Janet's texts about retrieving those items.

Janet testified that she remembered Schoch "taking off [her] tank top and ripping it" during the assault. Following the assault, Janet provided two items of clothing to law enforcement—a black shirt and a "blue type camisole." On cross-examination, Janet conceded that neither of those items was the tank top that was ripped during the assault. She admitted that she was "not 100 percent" sure whether she left the ripped tank top at Schoch's apartment.

The State also presented testimony at trial from the physician who saw Janet in the emergency room and the nurse who performed Janet's sexual assault nurse examination ("SANE exam"). During the SANE exam, Janet reported "ten out of ten" pain "to her backside." The nurse noted swelling around Janet's anus, a small bruise to her right elbow, and red linear marks on both of her ankles.

The State also introduced testimony from a DNA analyst regarding his analysis of samples collected during Janet's SANE exam. The analyst explained that no male DNA was found on the anal or oral swabs from the SANE kit. Testing of the cervical swabs was

"inconclusive," as only a partial YSTR profile could be obtained.[3] The analyst testified, however, that YSTR profiles recovered from the vaginal swabs, the external genital wipe, the external genital swab, and the mons pubis wipe were consistent with Schoch's YSTR profile. The analyst also explained that no semen was found on the vaginal, cervical, anal, oral, or external genital swabs.

A police officer testified at trial regarding items that were seized from Schoch's apartment during the execution of a search warrant, including a pair of women's boots, a Yeti tumbler, and ropes that were bolted to the wall above the head of the bed in the apartment's main bedroom. The officer did not testify that a ripped tank top was recovered from Schoch's apartment.

Finally, the State introduced testimony from an investigator who conducted a recorded interview with Schoch on March 26, 2021. During the interview, Schoch initially denied knowing anyone named Janet. He then stated that the only Janet he knew was his cousin. He denied having any women over to his apartment recently. He conceded that law enforcement might find a pair of women's boots in his apartment, but he stated they belonged to the mother of his children. He denied that there would be any messages between him and anyone named Janet on his cell phone.

The investigator testified that Schoch's story changed several times over the course of the interview. Ultimately, Schoch admitted that he knew a woman named Janet. He stated she had

[3] The DNA analyst explained that "autosomal DNA is what normally DNA testing is," but "[t]here are certain circumstances where we do the second form of DNA analysis[,] and that's called YSTRs." The analyst testified that "YSTRs are just performed on the Y chromosome, which is what men have. … So it's just uniquely for men."

come to his apartment to watch a movie, and they smoked marijuana, but they did not have sex. He then stated that Janet had come over the week before that, and he "believed" they were intimate on that occasion. Later, he "indicated that they had hooked up a few times at his place in Little Chute prior to his move to Kimberly and that they had hooked up at his apartment in Kimberly and that it was a casual relationship." He told the investigator that Janet wanted to date him, but he did not want to date her.

Later on during the interview, Schoch admitted that he had sexual intercourse with Janet on the night of the alleged assault, but he maintained that it was consensual. Specifically, he told the investigator that Janet helped him hang up the restraints in the bedroom; that she asked him to engage in anal sex with her, but he had difficulty inserting his penis into her anus; that Janet "masturbated herself utilizing sex toys she brought along"; and that he also masturbated Janet with "that same sex toy."

The defense presented expert testimony at trial from a forensic nurse, who identified inconsistencies in the SANE report and areas that she believed deviated from best practices. For example, the forensic nurse testified that based on her review of the records, Janet's report that she was experiencing "ten out of ten" pain was inconsistent with the lack of any "physical representation of a finding that would be causing pain." While the SANE exam had documented swelling to Janet's anus, the forensic nurse disputed that finding, instead opining that the swelling appeared to be the external part of an uninjured hemorrhoid. The forensic nurse also criticized the SANE report's characterization of the red marks on Janet's ankles as "ligature marks," stating that the SANE nurse should not have ascribed a cause to the injuries she observed.

Following a colloquy with the circuit court, Schoch waived his constitutional right to remain silent and elected to testify in his own defense. He testified that he met Janet on Facebook dating, and they had sex four times at his apartment in Little Chute and one time at his apartment in Kimberly. He also testified that three out of the four occasions when they had sex in Little Chute involved the use of restraints, and all of those encounters were consensual. According to Schoch, Janet repeatedly told him that she wanted to have a relationship that was "more than just casual," but each time he responded that he "wasn't ready for that."

Schoch testified that on the night of the alleged assault, Janet came to his apartment in Kimberly with marijuana and a sex toy. While they were in the living room, she used the sex toy on herself while performing oral sex on him. At some point, Janet asked whether Schoch still had the ropes that they had used in his prior apartment, and they went downstairs to his storage unit to retrieve them. While there, a hinge fell off the door, and Janet helped Schoch fix it. They then retrieved the ropes and mounted them to the wall in Schoch's bedroom.

Schoch testified that he and Janet attempted to have anal sex in the bedroom, but they were unsuccessful. They changed positions several times, including using the restraints, and Janet never told him to stop. Schoch testified that Janet put the restraints on herself and that the restraints did not restrict her movement. When they finished having sex, they lay down in his bed together and started watching a movie before falling asleep. When Schoch woke up, Janet was in the bathroom getting ready for work. Before leaving for work, Janet asked Schoch to get together with her family, and he responded that he was "[n]ot ready for that." Schoch testified that his response upset Janet, and he "asked her to leave [his] house."

Schoch acknowledged that he initially lied to the investigator during his recorded interview at the police station. However, he testified that at some point, he realized he needed to be honest, and he ultimately provided his version of events to the investigator "to the best of [his] memory."

The jury found Schoch guilty of all five of the charges against him.[4] Thereafter, the circuit court sentenced Schoch to 15 years of initial confinement followed by 15 years of extended supervision on the second-degree sexual assault count, with lesser concurrent sentences on the remaining charges. This no-merit appeal follows.

The no-merit report addresses: (1) whether the evidence at trial was sufficient to support Schoch's convictions; (2) whether any of the circuit court's evidentiary rulings constitute reversible error; and (3) whether the circuit court erroneously exercised its discretion when sentencing Schoch. Having independently reviewed the record, we agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

The no-merit report does not address whether any issues of arguable merit exist regarding: (1) the circuit court's denial of Schoch's motion to sever the bail jumping charges; (2) jury selection; (3) Schoch's waiver of his constitutional right not to testify; (4) the jury instructions; and (5) the parties' opening statements and closing arguments. Nevertheless,

[4] For purposes of the bail jumping charges, the parties stipulated that Schoch "was on active bonds in two felony criminal cases and one misdemeanor criminal case" on March 24, 2021, and that the conditions of those bonds "included that [Schoch] may not commit any crimes while on bond."

having independently reviewed the record, we are satisfied that none of these potential issues has arguable merit.

First, the circuit court did not erroneously exercise its discretion by denying Schoch's motion to sever the bail jumping charges. *See* ***State v. Nelson***, 146 Wis. 2d 442, 455, 432 N.W.2d 115 (Ct. App. 1988) ("Whether to sever otherwise properly joined charges on grounds of prejudice is within the trial court's discretion."). The court recognized that the charges had been properly joined under WIS. STAT. § 971.12(1) because they were "based on the same act or transaction." The court then noted that severance "would result in us doing the same trial twice," which would be contrary to the interest of judicial efficiency and the victim's rights under "Marsy's Law." The court further concluded that trying the bail jumping charges together with the other charges would not result in undue prejudice to Schoch and that any potential prejudice could be mitigated by an appropriate jury instruction or by a stipulation between the parties regarding Schoch's bond status. *See* ***Nelson***, 146 Wis. 2d at 455 (explaining that, when deciding a motion to sever charges, "the trial court must balance any potential prejudice to the defendant against the public's interest in avoiding unnecessary or duplicative trials"). On this record, there would be no arguable merit to a claim that the court erroneously exercised its discretion by denying Schoch's motion to sever the bail jumping charges.

Second, no errors occurred during jury selection. With the parties' agreement, the circuit court struck one juror for cause. None of the other answers during voir dire gave rise to an arguable basis to remove any other potential juror for cause.

Third, the circuit court conducted an appropriate colloquy with Schoch regarding his waiver of his constitutional right not to testify. Fourth, the jury instructions accurately conveyed

the applicable law and burden of proof. Fifth, nothing improper occurred during the parties' opening statements or closing arguments.

As noted above, Schoch has filed a response to the no-merit report, arguing that his trial attorneys were constitutionally ineffective in three ways. We conclude, however, that none of these issues has arguable merit.

First, Schoch contends that his trial attorneys were constitutionally ineffective "for failing to seek the suppression of Schoch's pre-***Mirandization*** statements to investigators." *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966). In support of this argument, Schoch notes that the investigator who interviewed him at the police station testified at trial that he read Schoch his ***Miranda*** rights at the beginning of the interview, but he never testified that Schoch actually waived those rights. Schoch also cites his own trial testimony that he did not sign the ***Miranda*** waiver form until after he had answered the investigator's questions.

The video of Schoch's interrogation, however, clearly shows that Schoch waived his ***Miranda*** rights at the beginning of the interview, before the investigator asked him any questions. As such, any motion to suppress Schoch's statements on the grounds that he did not waive his ***Miranda*** rights prior to the questioning would have failed. An attorney is not ineffective for failing to bring a meritless motion. *See* ***State v. Wheat***, 2002 WI App 153, ¶23, 256 Wis. 2d 270, 647 N.W.2d 441. An ineffective assistance claim on this basis would therefore lack arguable merit.

Second, Schoch contends that his trial attorneys were ineffective "for failing to adequately impeach [Janet] at trial." In support of this argument, Schoch outlines at least 15 lines of questioning and/or investigation that he believes his trial attorneys should have pursued

in order to impeach Janet's credibility by highlighting inconsistencies or implausibilities in her testimony. For the reasons explained in the supplemental no-merit report, we conclude that any ineffective assistance claim on these grounds would lack arguable merit.

For example, Schoch faults his trial attorneys for not asking Janet about a statement in her medical records that she had been tied "to the floor" during the assault, which was inconsistent with other evidence showing that the ropes were mounted to the wall above Schoch's bed. Although Schoch's trial attorneys did not specifically question Janet about this discrepancy, one of Schoch's attorneys emphasized this point during her cross-examination of the emergency room physician, eliciting his testimony that the statement in the medical records about Janet being tied to the floor would have been "exactly what" Janet told the triage nurse. It would have been clear to the jurors that the ropes shown in the photographs introduced at trial were not tied to the floor, even without Schoch's attorney cross-examining Janet on that specific point. Moreover, Schoch's attorney specifically emphasized this inconsistency during her closing argument. On this record, there would be no arguable merit to a claim that Schoch was prejudiced by his attorneys' failure to cross-examine Janet regarding her statement about being tied "to the floor."

As another example, Schoch faults his trial attorneys for failing to ask Janet "if she fled Schoch's apartment topless since, by her own testimony, her shirt was ripped off and supposedly left there." In closing, however, Schoch's attorney highlighted the inconsistencies in the evidence regarding the shirt or shirts that Janet may have been wearing on the night of the assault. Specifically, counsel noted that while Janet had provided two shirts to law enforcement, neither was the tank top that she claimed had been ripped during the assault. Our review of the record shows that Schoch's trial attorneys adequately addressed the inconsistencies in the

evidence regarding Janet's clothing, and we agree with appellate counsel that there would be no arguable merit to a claim that Schoch was prejudiced by counsel's failure to further question Janet about whether she fled Schoch's apartment "topless."

We will not endeavor to address, specifically, each of the additional ways in which Schoch believes that his trial attorneys should have challenged Janet's credibility at trial. Suffice it to say that we agree with appellate counsel's assessment in the supplemental no-merit report that most of the underlying facts about which Schoch believes his attorneys should have questioned Janet were already in evidence, and

> [w]hile Schoch may have liked to watch his attorney[s] question [Janet] in a more aggressive manner, he does not make any claims that would suggest that his attorneys performed deficiently, or offer any reasonable explanation as to how he was prejudiced by the manner in which the evidence was presented to the jury.

The supplemental no-merit report satisfactorily explains why Schoch's claim that his trial attorneys were ineffective by failing to adequately impeach Janet lacks arguable merit, and we will not address this issue further.

Third and finally, Schoch asserts that his trial attorneys were constitutionally ineffective by failing to introduce evidence at trial regarding "[t]he presence of at least two other men's DNA inside" Janet. As the no-merit report recounts, prior to trial, Schoch moved to introduce evidence that a mixture of DNA from "at least two" men was found on a cervical swab taken during Janet's SANE exam. Schoch argued that this evidence was admissible as impeachment evidence because Janet told the SANE nurse and one of the investigating officers that she had not had sexual contact with anyone but Schoch during the five days before the assault.

The circuit court denied Schoch's motion to admit this evidence for two reasons. First, the court concluded the evidence was inadmissible under ***McClelland v. State***, 84 Wis. 2d 145, 159, 267 N.W.2d 843 (1978), which held that "[i]mpeachment of a witness on the basis of collateral facts introduced by extrinsic testimony is forbidden." Second, the court concluded the evidence was inadmissible under the rape shield statute, WIS. STAT. § 972.11(2).

In his response to the no-merit report, Schoch asserts that his trial attorneys should have moved to admit this evidence on different grounds. Namely, Schoch contends that his trial attorneys should have argued the evidence was admissible to show an alternative source for the "ten out of ten" pain that Janet reported and for the injuries documented during her SANE exam.

We agree with appellate counsel that this issue lacks arguable merit. As an initial matter, the evidence would have been inadmissible under the rape shield statute, which generally prohibits the introduction in sexual assault prosecutions of "any evidence concerning the complaining witness's prior sexual conduct," subject to the following three exceptions:

> 1. Evidence of the complaining witness's past conduct with the defendant.
>
> 2. Evidence of specific instances of sexual conduct showing the source or origin of semen, pregnancy or disease, for use in determining the degree of sexual assault or the extent of injury suffered.
>
> 3. Evidence of prior untruthful allegations of sexual assault made by the complaining witness.

WIS. STAT. § 972.11(2)(b). Evidence that DNA from at least two men was found on Janet's cervix clearly does not fall within the first and third of these exceptions. As for the second exception, we agree with appellate counsel that the presence of a mixture of DNA from at least two men on Janet's cervix does not qualify as evidence of a "specific instance[] of sexual

conduct." *See* § 972.11(2)(b)2. Additionally, Schoch does not argue that this evidence would have been used to show "the source or origin of semen, pregnancy or disease, for use in determining the degree of sexual assault or the extent of injury suffered." *See* ***id.***

We also agree with appellate counsel that the evidence would not have been admissible under ***State v. Pulizzano***, 155 Wis. 2d 633, 456 N.W.2d 325 (1990). There, our supreme court held that "in the circumstances of a particular case evidence of a complainant's prior sexual conduct may be so relevant and probative that the defendant's right to present it is constitutionally protected." ***Id.*** at 647. To admit evidence of a complainant's prior sexual conduct under ***Pulizzano***, a defendant must make an offer of proof showing: (1) that the prior acts clearly occurred; (2) that the acts closely resembled those in the present case; (3) that the prior acts are clearly relevant to a material issue; (4) that the evidence is necessary to the defense; and (5) that the evidence's probative value outweighs its prejudicial effect. ***Id.*** at 656. We agree with appellate counsel that Schoch's attempt to introduce the DNA evidence in question would have "fail[ed] at the first prong because he cannot show that a prior act [clearly] occurred," given the limited DNA evidence available, which merely shows that DNA from at least two males was present on Janet's cervix following the assault. *See* ***id.*** Furthermore, the mere presence of DNA from at least two males on Janet's cervix does not show that any sex acts with another individual "closely resembled" those alleged in the present case. *See* ***id.***

Because the DNA evidence would have been inadmissible under both the rape shield statute and ***Pulizzano***, any motion seeking to admit that evidence to show an alternative source for Janet's reported pain or injuries would have failed. Again, an attorney is not ineffective for failing to bring a meritless motion. *See* ***Wheat***, 256 Wis. 2d 270, ¶23.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carlos Bailey is relieved of further representation of Tylor J. Schoch in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals