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DISTRICT II

February 4, 2026

To:

Hon. Lloyd V. Carter
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

Jason D. Luczak
Electronic Notice

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

2023AP2161-CR State of Wisconsin v. Todd M. Stolpa (L.C. #2020CF1392)

Before Neubauer, P.J., Grogan, 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).

Todd M. Stolpa appeals an order requiring him to refrain from using and return to the victim therapy records previously disclosed under the now-overruled procedure of *State v. Shiffra*, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993), and *State v. Green*, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298. 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 Because *State v. Johnson*, 2023 WI 39, 407 Wis. 2d 195, 990 N.W.2d

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

174, applies retroactively under controlling precedent, the circuit court correctly restored the victim's privilege and sealed the records. Therefore, we affirm.

Stolpa was charged with multiple counts of sexual assault. During earlier proceedings, the circuit court conducted *in camera* reviews of the victim's privileged therapy records based on the *Shiffra-Green* standard, disclosing certain portions it viewed as potentially exculpatory. After the Wisconsin Supreme Court held in *Johnson* that courts lack authority to compel disclosure or *in camera* review of privileged, privately held therapy records, the State moved to seal those records and require their return. *Id.*, 407 Wis. 2d 195, ¶47. The court granted the motion, explaining that *Johnson* controlled and must be applied retroactively under *State v. Koch*, 175 Wis. 2d 684, 693-94, 499 N.W.2d 152 (1993), and *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987).

We agree with the circuit court that *Johnson* applies retroactively. In *Koch*, our supreme court adopted *Griffith*'s broad retroactivity rule: "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases[.]" *Koch*, 175 Wis. 2d at 694 (quoting *Griffith*, 479 U.S. at 328). *Johnson* clearly announced such a "new rule" by prohibiting compelled access to privileged, private therapy records. *Johnson*, 407 Wis. 2d 195, ¶47. Because this case was pending on direct review when *Johnson* was issued, the court properly applied it retroactively. Retroactive application means the earlier *Shiffra-Green* disclosure was erroneously compelled under WIS. STAT § 905.12, which bars admission of privileged matter disclosed through such compulsion. The court appropriately required the return and sealing of the records.

Stolpa contends that applying **Johnson** retroactively violates his constitutional right to confrontation and his right to present a defense. We reject these arguments. The United States Supreme Court held that the confrontation clause does not grant defendants the right to discover privileged records. **Pennsylvania v. Ritchie**, 480 U.S. 39, 52-54 (1987) (“[T]he right to confrontation is a *trial* right … [and] does not include the power to require the pretrial disclosure of any and all information that might be useful in contradicting unfavorable testimony.”). Moreover, the circuit court has not prohibited Stolpa from cross-examining the victim about her mental health, if relevant, or from otherwise presenting a defense.

Stolpa also argues that he is entitled to the now-privileged records under **Brady v. Maryland**, 373 U.S. 83, 87 (1963). **Brady** applies only to materials in the State’s possession or control. Cf. **United States v. Bagley**, 473 U.S. 667, 680 (1985). Here, the therapy records were never in the State’s possession; they were produced directly to the circuit court by private therapists. We agree with the State that the victim’s therapy records are not being suppressed by the prosecution; rather, they were erroneously compelled from the victim by court order.

Finally, Stolpa contends that the circuit court should have held an evidentiary hearing. We conclude a hearing was not required. Once **Johnson** is applied retroactively, the disclosure was erroneous as a matter of law under WIS. STAT. § 905.12. Therefore, the court properly restored the victim’s privilege without taking testimony.

Upon the foregoing,

IT IS ORDERED that the order of the circuit court 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