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DISTRICT IV

June 11, 2026

To:

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Circuit Court Judge
Electronic Notice

Joseph S. Riepenhoff
Electronic Notice

Lisa M. Roth
Clerk of Circuit Court
Portage County Courthouse
Electronic Notice

Kathleen E. Wood
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You are hereby notified that the Court has entered the following opinion and order:

2025AP946-CR

State of Wisconsin v. Carlos Rodriguez (L.C. # 2019CF245)

Before Blanchard, Kloppenburg, 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).

Carlos Rodriguez was convicted, after a jury trial, of two felony sexual assault offenses involving a child. On appeal, Rodriguez requests a new trial based on what he describes as a circuit court error in excluding expert testimony offered by the defense. After reviewing 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 summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version except as otherwise noted.

Rodriguez was charged with first-degree and repeated sexual assault of his girlfriend's nine-year-old relative, A.B.² Rodriguez's defense theory was that A.B. was lying or mistaken in reporting what occurred.

Before trial, Rodriguez filed a report from a defense expert, licensed psychologist Dr. Hollida Wakefield. Wakefield's report discussed memory limitations such as "source monitoring error[s]," in which a person confuses mere information that the person has discussed with someone else with events that actually occurred. Wakefield's report also discussed "confirmatory bias," a phenomenon that could be manifested when an interviewer's preexisting beliefs about what happened cause the interviewer to ask suggestive or leading questions to a child reporting sexual abuse. Wakefield reviewed the interview of A.B. conducted by a forensic interviewer in this case and noted that the interviewer did well in terms of establishing rapport, setting clear ground rules, emphasizing the importance of honesty, and using open-ended prompts to encourage narrative answers from A.B. However, Wakefield also identified what she testified were deficiencies in the interview, such as that the interviewer did not probe previous discussions with others that A.B. may have had regarding the abuse, and that the interviewer failed to explore alternative hypotheses for A.B.'s allegations. Wakefield also noted that, ten days before the forensic interview, A.B. reportedly talked with a social worker at school, but the conversation was never recorded.

The State moved to exclude any testimony from Wakefield, arguing that the testimony was inadmissible under WIS. STAT. § 907.02. The circuit court held a *Daubert* hearing to

² This matter involves a crime victim. For ease of reading and pursuant to the policy underlying WIS. STAT. RULE 809.86(1), (4), we refer to the victim using initials that do not correspond to the initials of the victim.

determine whether Wakefield would be allowed to testify at trial. *See generally Daubert v. Merrell Dow Pharm.*, 509 U.S. 579 (1993). Both Wakefield and the forensic interviewer testified at the *Daubert* hearing. Following the hearing, the circuit court entered a written order granting the State's motion to exclude the testimony, concluding that the testimony would not assist the jury in understanding the evidence or determining a fact in issue. The case proceeded to trial, and the jury found Rodriguez guilty of both sexual assault counts.

On appeal, Rodriguez challenges the circuit court's ruling to exclude Wakefield's expert testimony. Appellate courts review a circuit court's decision to admit or exclude expert testimony under an erroneous exercise of discretion standard. *State v. Shomberg*, 2006 WI 9, ¶10, 288 Wis. 2d 1, 709 N.W.2d 370; *see also General Elec. Co. v. Joiner*, 522 U.S. 136, 138-39 (1997) (applying discretion standard to a *Daubert* ruling). A circuit court properly exercises its discretion when it has examined the relevant facts, applied the proper legal standards, and engaged in a rational decision-making process. *State v. Bentley*, 201 Wis. 2d 303, 318, 548 N.W.2d 50 (1996). We conclude that the record reflects that the court did so here.

The admission of expert testimony is governed by WIS. STAT. § 907.02, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.

See § 907.02 (2021-22).³

The circuit court performs a gatekeeping function “to ensure that the expert’s opinion is based on a reliable foundation and is relevant to the material issues.” *State v. Giese*, 2014 WI App 92, ¶18, 356 Wis. 2d 796, 854 N.W.2d 687. Expert testimony must “assist the trier of fact to understand the evidence or determine a fact in issue” in the case. WIS. STAT. § 907.02(1). As the gatekeeper performing an analysis pursuant to *Daubert*, the circuit court considers the following factors before admitting expert testimony:

- (1) whether the scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue;
- (2) whether the expert is qualified as an expert by knowledge, skill, experience, training, or education;
- (3) whether the testimony is based upon sufficient facts or data;
- (4) whether the testimony is the product of reliable principles and methods; and
- (5) whether the witness has applied the principles and methods reliably to the facts of the case.

State v. Jones, 2018 WI 44, ¶29, 381 Wis. 2d 284, 911 N.W.2d 97.

Here, the circuit court explicitly considered each of the five factors required for analyzing the admissibility of expert testimony and applied those factors, using a rational decision-making process, to the relevant facts. The court determined that four out of the five factors had been satisfied. That is, the court ruled that Wakefield was qualified to render an expert opinion, that her testimony was based on sufficient facts or data, that her testimony was the product of reliable principles and methods, and that she applied those principles and methods reliably to the relevant facts.

³ We note for context that the legislature made changes to WIS. STAT. § 907.02 through legislation passed earlier this year. *See* 2025 Wis. Act 92, § 1. These changes do not appear to alter the aspect of § 907.02 that addresses whether proposed expert testimony “will assist the trier of fact.” *See* 2025 Wis. Act 92, § 1. In any case, the legislation makes clear that the changes to the statute apply prospectively and therefore have no effect on our analysis of any issue raised in this appeal. *See id.*, § 2.

The only admissibility factor that the circuit court concluded had not been satisfied was the requirement that the expert's specialized knowledge would assist the trier of fact to understand the evidence or determine a fact at issue. As to this factor, the court said that it "cannot find that Dr. Wakefield's testimony addresses any issue in contention, or that her testimony is necessary," because her "specialized knowledge" would not assist the jury and "potentially" it would "invade the duties of the jury." Specifically referring to Wakefield's concern about A.B.'s unrecorded conversation with a social worker at school, the court said that the issue could be explored on cross-examination.

We are satisfied that the circuit court's decision to exclude Wakefield's expert testimony demonstrates a proper exercise of discretion. The court found that there was no indication of leading questioning or other influencing behavior toward A.B. This finding is supported by the transcript of the *Daubert* hearing. When Wakefield was asked whether she could point to any specific information suggesting that A.B.'s memories had in fact been influenced, she answered, "I don't know. I just—there are just too many things that have to be considered about what people believed, what people talked to her about." This did not support the defense position that her testimony would assist the jury. More broadly, Rodriguez does not direct us to any evidence suggesting that A.B.'s memories had been tainted by source monitoring errors, confirmatory bias, or any other concern noted in Wakefield's expert report.

Both of A.B.'s parents testified at trial, and neither of them reported asking A.B. the type of leading or suggestive questions that Wakefield opined could lead to memories being altered or fabricated. To the contrary, A.B.'s father testified that A.B. was the one who broached the topic of sexual assault by telling him that Rodriguez had been doing "sex things" to her. Additionally, the social worker who talked with A.B. at school testified at trial that her unrecorded

conversation with A.B. was not about the alleged sexual abuse, and Rodriguez provides no reason to think otherwise.

In sum on this issue, we are satisfied that the circuit court did not erroneously exercise its discretion when it excluded Wakefield’s proffered expert testimony on the ground that it would not assist the trier of fact to understand the evidence or determine a fact in issue.

As an alternative avenue for relief, Rodriguez argues that this court should exercise its discretionary authority to reverse and grant a new trial. WISCONSIN STAT. § 752.35 allows this court to reverse a judgment “if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried.” Rodriguez’s argument is based entirely on the exclusion of Wakefield’s testimony, and we have explained above our conclusion that the circuit court did not erroneously exercise its discretion in excluding this testimony. This court exercises its discretionary reversal authority under § 752.35 “sparingly and only in the most exceptional cases.” *State v. Schutte*, 2006 WI App 135, ¶62, 295 Wis. 2d 256, 720 N.W.2d 469. Rodriguez does not persuade us that discretionary reversal is warranted under the circumstances.

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.83(2).

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

Samuel A. Christensen
Clerk of Court of Appeals