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DISTRICT III

July 14, 2026

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Circuit Court Judge
Electronic Notice

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

2025AP78-CRNM

State of Wisconsin v. Terry L. Davis (L. C. No. 2021CF331)

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

Terry Davis appeals from a judgment convicting him, following a jury trial, of operating a motor vehicle while under the influence of an intoxicant (OWI), as a fifth or sixth offense. Attorney Dennis Schertz has filed a no-merit report seeking to withdraw as appellate counsel. See WIS. STAT. RULE 809.32 (2023-24).¹ The no-merit report sets forth the procedural history of

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

the case and addresses the sufficiency of the evidence to support the verdict, trial counsel's performance, and the sentence. Davis has filed two responses to the no-merit report, alleging that: (1) his trial counsel provided ineffective assistance by advising him not to testify; (2) one of the arresting law enforcement officers fractured Davis's sternum while holding Davis down for a blood draw; (3) the officer's body camera was either improperly turned off during a portion of the blood draw or some of its footage was deleted; (4) the circuit court and district attorney covered up the officer's alleged misconduct by excluding evidence of an internal police investigation; and (5) his trial counsel should have subpoenaed a laboratory technician who was in the room when Davis claims a law enforcement officer fractured his sternum. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal. Therefore, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. See WIS. STAT. RULE 809.21.

Sufficiency of the Evidence

In order to provide context to other potential issues raised by Davis, we will begin by discussing the sufficiency of the evidence to support the verdict. We review the sufficiency of the evidence by comparison to the instructions given to the jury, so long as those instructions conform to the statutory requirements of the charged offense. *State v. Beamon*, 2013 WI 47, ¶22, 347 Wis. 2d 559, 830 N.W.2d 681. “[W]e consider all of the evidence produced at trial, including evidence that the defendant challenges as being improperly admitted.” *State v. LaCount*, 2007 WI App 116, ¶22, 301 Wis. 2d 472, 732 N.W.2d 29. The test is whether “the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable

doubt.” *State v. Poellinger*, 153 Wis.2d 493, 507, 451 N.W.2d 752 (1990); WIS. STAT. § 805.15(1).

Here, the circuit court properly instructed the jury that, to prove Davis guilty of OWI, the State needed to provide evidence showing beyond a reasonable doubt that: (1) Davis operated a motor vehicle on a highway (meaning that he physically manipulated or activated any of the controls of a motor vehicle necessary to put it in motion); and (2) Davis was under the influence of an intoxicant at the time he operated the motor vehicle (meaning that his ability to operate the vehicle was impaired because of consumption of an alcoholic beverage). See WIS. STAT. § 346.63(1)(a); WIS JI—CRIMINAL 2663.

The State began its case with two eyewitnesses. Dale Smith testified that he saw a small silver Saturn SUV strike a traffic pole at an intersection. Immediately prior to the accident, Smith had observed the same Saturn driving erratically for about ten miles on the route from Cameron to Rice Lake. The Saturn kept speeding up and slowing down, and it was swerving from side to side crossing over between two lanes. Smith also saw the Saturn drive onto a median at one point. After seeing the accident, Smith pulled over and called 911.

While he was on the phone, Smith observed the Saturn back up from the traffic pole and leave the scene. Smith followed the Saturn in his own car for about one-half of a mile and watched it “continuously, like, banging up against the curb” before it pulled into a driveway. Smith then saw a Rice Lake police car pull into the driveway directly behind the vehicle.

Mark Barta testified that, shortly after hearing a crashing noise, he saw a gray Saturn Vue up against a traffic pole at an intersection. Upon observing the Saturn back away from the pole and drive away from the scene, Barta also followed the Saturn in his own car. Barta observed

that there was steam coming from the Saturn, it had heavy damage to its front end, and its bumper cover was dragging on the ground. As Barta followed the Saturn, he saw it “swerving a lot and almost bouncing off the curb.” Barta watched the Saturn turn into a driveway and saw the police arrive while the sole occupant of the Saturn was still in it.

Rice Lake Police Department Patrol Officer Sawyer Prinsen testified that he was dispatched in response to a reported hit-and-run incident and shortly thereafter arrived at the driveway where the Saturn had pulled in. Prinsen observed that the Saturn had extensive front-end damage and steam coming from its engine compartment. Prinsen made contact with the Saturn’s driver, later identified as Davis, and recorded their interaction on a body camera video, which was played for the jury. Prinsen observed that Davis appeared confused, that his eyes were bloodshot and glossy, that his speech was slurred, and that he was uncooperative in terms of answering simple questions. Once Davis exited his vehicle, Prinsen could also detect an odor of intoxicants coming from Davis.

After Davis refused to perform field sobriety tests, Prinsen took Davis into custody and transported him to the Rice Lake Police Department. Prinsen then filled out paperwork and drove to a judge’s house to obtain a search warrant for samples of Davis’s blood. Prinsen was later present at the Marshfield Medical Clinic when a laboratory technician conducted a blood draw on Davis over two and one-half hours after the accident. Prinsen took custody of the blood samples in a sealed box and placed them in a secured evidence locker at the police station.

Rice Lake Police Sergeant Kevin Reinikainen also responded to the hit-and-run dispatch. Reinikainen spoke with Smith and Barta while Prinsen made initial contact with Davis, and he later took photographs of the traffic pole hit by the Saturn, which were introduced into evidence.

Reinikainen likewise noticed the odor of intoxicants coming from Davis after Davis had exited his vehicle, and he also saw that Davis was unsteady on his feet and had urinated on himself.

Amanda Morse, a laboratory technician at the Marshfield Medical Clinic, testified that she obtained two vials of blood from Davis after another laboratory technician made several unsuccessful attempts to draw Davis's blood. Morse packaged the blood samples into a sealed kit and turned them over to Prinsen with an accompanying form that she had completed.

Rice Lake Police Department Investigator Brandon Bohl testified that he retrieved Davis's blood kit from the police station evidence locker and sent it in for testing.

Kimberle Glowacki, a forensic scientist at the Wisconsin State Laboratory of Hygiene, tested Davis's blood. Glowacki observed that the blood samples were accompanied by the form signed by Morse, as well as by another laboratory employee who verified that the kit had been sealed when it was received by the laboratory. Glowacki testified that the analysis of Davis's blood revealed a blood alcohol concentration (BAC) of 0.278 grams of ethanol per 100 milliliters.

This evidence easily satisfies both elements of OWI. Davis therefore has no arguable basis to challenge the sufficiency of the evidence.

Decision to Testify

Davis alleges that his trial counsel provided ineffective assistance by advising him not to testify. However, Davis could not establish the prejudice element of an ineffective assistance claim for two reasons.

First, Davis has not alleged what testimony he could have given that would have been reasonably likely to change the outcome of the trial, given the overwhelming evidence discussed above. See *State v. Sholar*, 2018 WI 53, ¶45, 381 Wis. 2d 560, 912 N.W.2d 89 (requiring a showing of a reasonable probability of a different result to demonstrate prejudice). To the contrary, given Davis’s extremely high BAC and his admission at the sentencing hearing that he “did do this to myself,” he would have had to admit to drinking a substantial amount of alcohol if he had taken the stand. Davis’s decision not to take the stand allowed defense counsel on cross-examination to question the investigating officers’ failure to ascertain that Davis was not having a medical incident at the time of the accident.

Second, the ultimate decision whether to testify belonged to Davis, not his trial counsel. The circuit court properly conducted a colloquy to ensure that Davis made that decision knowingly and voluntarily, including with knowledge that counsel could not make the decision for Davis.

Fractured Sternum During Blood Draw

Davis alleges that Prinsen fractured Davis’s sternum while forcefully holding Davis down for the unsuccessful blood draw attempts made by the first technician, Laura Burke. Davis has not, however, provided any medical records or proffered any proposed testimony from other witnesses that would support his allegation.

Prinsen acknowledged on cross-examination at trial that it took multiple attempts to obtain Davis’s blood, but he denied any knowledge that Davis’s sternum had been injured during the procedure. Prinsen further testified that Davis did not complain of any injuries or request any medical attention following the blood draw. Prinsen also testified that, had Davis made any such

complaint, a medical screening would have been required prior to returning him to the jail. That did not occur.

Any claim Davis might make that his counsel was constitutionally ineffective by failing to move to suppress the blood test results on the ground that the blood draw was not performed in a reasonable manner would likewise fail given the lack of any evidence that Davis sustained any sternum injury. Furthermore, even if it were true that Davis's sternum was injured during the blood draw, that fact does not negate the results of the blood test or in any way undermine either the testimony of the two independent eyewitnesses to Davis's erratic driving or the body camera video showing Davis's highly impaired state immediately after the accident. In sum, Davis has failed to explain how his allegation that he was injured during his blood draw would provide any arguably meritorious basis to challenge his conviction given the other overwhelming evidence of intoxication.²

Body Camera Footage

Davis contends that Prinsen's body camera was either improperly turned off during the initial unsuccessful attempts to draw his blood or its footage was deleted. We note that Davis made a discovery demand for additional body camera footage from the blood draw. The State responded that it had turned over all available footage, and the circuit court accepted the State's representations that no additional footage existed or had been deleted but noted that questions regarding additional body camera footage could be brought up with the officers on

² We take no position on whether the alleged injury would support a civil claim, which lies outside the scope of this appeal.

cross-examination. No evidence was provided to show that any additional footage existed or was deleted. Therefore, there is no factual basis to claim a discovery violation.

The absence of additional body camera footage also does not present any arguably meritorious issue of prosecutorial misconduct because there was no statutory or constitutional requirement that the blood draw be videotaped in the first place.

Internal Investigation

Davis alleges that the circuit court covered up Prinsen's "police brutality" against him. Specifically, the court sustained an objection to relevance when trial counsel asked Prinsen whether the Rice Lake Police Department had conducted an internal investigation into Prinsen's actions in this case. During a sidebar, the court additionally noted that trial counsel had not filed a pretrial motion to admit other-acts evidence. When trial counsel said she viewed the question as going more toward credibility than being other-acts evidence, the court pointed out that counsel was not offering to present anything from the internal investigation that conflicted with the officer's trial testimony. All three grounds cited by the court provided a reasonable basis to exclude testimony about an internal investigation into Prinsen's conduct.

Subpoena for Burke

Davis alleges that his trial counsel should have subpoenaed Burke to testify about Prinsen's conduct during Burke's initial attempts at drawing Davis's blood. Davis cannot demonstrate prejudice from this alleged failure, however, because he has not provided any affidavit from Burke showing that her testimony would support his allegation that Prinsen injured him during the blood draw. Furthermore, as we have already discussed, even if Prinsen

did injure Davis, that information did not make it reasonably probable the outcome of the trial would have been different.

Sentence

The circuit court held a sentencing hearing during which it heard from counsel and Davis personally, and the State presented a certified copy of Davis's driving record. The court then discussed how factors such as the severity of the offense and Davis's character related to its sentencing objective of protecting the public. The court viewed the offense as aggravated due to the extended distance Davis drove, the damage to city property, the fact that Davis left the scene of the accident, and his incredibly high BAC. It emphasized that it was not punishing Davis for drinking, but rather for getting behind the wheel while intoxicated. It deemed a significant prison term beyond the mandatory minimum to be necessary.

The circuit court imposed a bifurcated sentence consisting of 3 years' initial confinement followed by 3 years' extended supervision with various conditions and 41 days of sentence credit. The court also ordered 36 months of license revocation and ignition interlock and imposed statutory fees.

The components of the sentence did not exceed the maximum available penalties. *See* WIS. STAT. §§ 346.65(2)(am)5. (classifying a 5th or 6th OWI offense as a Class G felony); 973.01(2)(b)7., (d)4. (providing maximum terms of five years' initial confinement and five years' extended supervision for a Class G felony). The circuit court provided a reasonable explanation for why it imposed the sentence. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was not "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the

judgment of reasonable people concerning what is right and proper under the circumstances.”
See *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted).

Conclusion

Our independent review of the record, including an earlier mistrial, adjournments of the trial date, and voir dire, discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Terry Davis in this matter pursuant to 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