



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT II

September 30, 2026

To:

Hon. Angela W. Sutkiewicz
Circuit Court Judge
Electronic Notice

Gregory Bates
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

Brandon Zegiel
Electronic Notice

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

2025AP1559-CR

State of Wisconsin v. Carlos Tovar, Jr. (L.C. #2022CF13)

Before Lazar, P.J., Gundrum, and Grogan, 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 Tovar, Jr. appeals from a judgment of conviction and the order denying his postconviction motion. 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 For the following reasons, we affirm.

In January 2022, Tovar was charged with one count of repeated sexual assault of a child in violation of WIS. STAT. § 948.02(1)(am), (b), or (c), contrary to WIS. STAT. § 948.025(1)(b).

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

Tovar denied the allegations and proceeded to trial. The jury found Tovar guilty. The child testified that Tovar repeatedly sexually assaulted her, including by forcing her to perform oral sex. She also testified that he made her rinse her mouth and brush her teeth afterward. Testing revealed no semen on items collected from locations associated with the alleged assaults. However, testing detected male DNA on the interior of the child's toothbrush cover, and a partial Y-STR² profile was consistent with Tovar's DNA. The State's DNA analyst testified on cross-examination that secondary transfer was a possible explanation for the DNA and that she could not determine how it came to be on the cover.

Tovar first argues that trial counsel was ineffective for failing to seek exclusion of the DNA evidence and for failing to retain a defense DNA expert. To establish ineffective assistance of counsel, a defendant must prove both deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Breitzman*, 2017 WI 100, ¶37, 378 Wis. 2d 431, 904 N.W.2d 93. “If the defendant fails to satisfy either prong, we need not consider the other.” *Breitzman*, 378 Wis. 2d 431, ¶37. We uphold the circuit court's factual findings unless clearly erroneous but independently determine whether counsel's performance was constitutionally deficient or prejudicial. *State v. Jenkins*, 2014 WI 59, ¶38, 355 Wis. 2d 180, 848 N.W.2d 786. Tovar has failed to meet his burden for two reasons.

First, Tovar fails to establish deficient performance. A defendant must identify specific acts or omissions by counsel that fall “outside the wide range of professionally competent

² At the jury trial, the State's DNA analyst testified that “a Y-STR profile is a profile that is male specific, the testing is only conducted on the Y ... chromosome.”

assistance.” *State v. Arredondo*, 2004 WI App 7, ¶24, 269 Wis. 2d 369, 674 N.W.2d 647 (2003) (citation omitted).

Here, the DNA evidence was relevant. The child testified that Tovar made her brush her teeth following oral assaults, and DNA consistent with Tovar’s profile was found on the interior of her toothbrush cover. At the same time, the testing revealed no semen and no male DNA on the toothbrush itself or the other tested items. The jury also heard that Tovar’s DNA could have reached the toothbrush cover through secondary transfer. Thus, the evidence was capable of supporting each of the State’s and defendant’s theories of the case.

Trial counsel reasonably chose to use those limitations in the DNA evidence to Tovar’s advantage rather than seek its exclusion. At the postconviction hearing, Tovar’s counsel explained that the absence of semen and the lack of male DNA on the other tested items allowed her to argue that the State lacked physical evidence corroborating the child’s account. Tovar’s counsel also elicited from the State’s expert that secondary transfer could explain the DNA on the toothbrush cover. We do not second-guess a reasonable trial strategy merely because another strategy was available. *Breitzman*, 378 Wis. 2d 431, ¶65; *see also Strickland*, 466 U.S. at 689-90 (“There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.”).

Nor was trial counsel deficient for failing to retain a separate DNA expert. Tovar presented no postconviction expert identifying testimony that a defense expert would have offered. Tovar’s counsel obtained from the State’s expert the very same testimony Tovar contends another expert should have provided: no semen was detected, secondary transfer was

possible, and the analyst could not determine how Tovar's DNA came to be on the toothbrush cover. Tovar's counsel was not required to call a second expert to repeat those points.

Second, Tovar fails to establish prejudice. Although we need not address prejudice because Tovar has failed to establish deficient performance, we conclude that he has failed to establish either prong. See *Breitzman*, 378 Wis. 2d 431, ¶37. A motion to exclude the DNA evidence would not have succeeded, and Tovar has not shown that another expert would have provided materially different evidence. He therefore has not demonstrated a reasonable probability of a different result. See *State v. Romero-Georgana*, 2014 WI 83, ¶41, 360 Wis. 2d 522, 849 N.W.2d 668 ("The prejudice inquiry asks whether 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" (citation omitted)).

Tovar next challenges the sufficiency of the evidence but does not adequately develop his argument. We therefore decline to address this claim. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining that we may decline to review inadequately briefed issues).

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are 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