



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](http://www.wicourts.gov)

**DISTRICT I**

June 27, 2023

To:

Hon. Mark A. Sanders  
Circuit Court Judge  
Electronic Notice

Angela Conrad Kachelski  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Donald V. Latorraca  
Electronic Notice

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

---

2021AP2126-CR

State of Wisconsin v. Keira Hulbert (L.C. # 2019CF854)

2021AP2130-CR

State of Wisconsin v. Keira Hulbert (L.C. # 2018CF6043)

Before Brash, C.J., Donald, P.J., and Dugan, J.

**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).**

Keira Hulbert appeals from judgments of conviction, contending the trial court erred when it denied her motion for a mistrial. 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 (2021-22).<sup>1</sup> The judgments are summarily affirmed.

Hulbert's boyfriend, Terrance L. Millighan, was charged in December 2018 with one count of first-degree sexual assault of a child less than twelve years of age based on allegations

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

made by J.H., Hulbert's eight-year-old daughter. J.H. also alleged that Hulbert knew about Millighan's ongoing assault because "half of the time she saw it and ignored it ... and sometimes she was watching." Thus, Hulbert was charged with one count of sexual assault of a child by failure to act, contrary to WIS. STAT. § 948.02(3) (2017-18).

At the initial appearance on December 26, 2018, a no-contact order was issued that prohibited Hulbert from contacting J.H. On February 22, 2019, J.H. was shopping with her paternal grandmother and two aunts. Hulbert and her sister entered the store and approached J.H. and her relatives. An argument ensued, which evolved into a physical altercation that continued until one of J.H.'s aunts produced a firearm. As a result of the encounter, Hulbert was charged with one count of felony bail jumping, one count of disorderly conduct, and two counts of felony witness intimidation.

Prior to trial, the State moved to allow J.H. to testify via "video conferencing" or closed circuit television. The trial court denied the request because it was not confident that the defendants' right of confrontation and the jury's ability to evaluate witness credibility could be properly preserved.

Hulbert and Millighan were tried jointly. J.H. was the second witness called by the State. When she entered the courtroom, the trial court greeted her, saying, "Hi. So [J.H.], can you do a couple things for me?" J.H. replied, "I can't—". The State interjected, and the trial court sent the jury out. About twenty minutes later, the trial court made a record about what had transpired.

[J.H.] came into the courtroom with a victim witness advocate, and she was very, I think, visibly reluctant when she came in. She was clutching a small stuffed toy or rubber squeeze toy. She had her denim purse that she was clutching close to her....

So when she came in and was stepping on to the witness stand, she looked over at the defense table and began to ... cry fairly heavily. When she got on to the witness stand, she began to cry even more heavily when she again looked at the defense table....

[W]e took a break after she had seemed to calm down a little bit. And I began to chat with her and I asked her to do a couple of things. And she—that’s when she broke down again.

The trial court told the parties that it wanted to have J.H. try one more time to take the stand and testify in court, but stated that “if we try it again and she’s not able to testify, we can revisit the topic of closed circuit testimony.” Millighan’s attorney interjected, agreeing they should try again for live testimony, but stating that “if we have to revisit the topic and go to a different method [of J.H. testifying], then we can’t have the same jury.” The trial court disagreed and after further discussion, which included inviting the parties to brief the issue overnight, the trial court dismissed the jury and adjourned for the day.

The next morning, the parties first discussed whether it would be appropriate, based on statutory and other requirements,<sup>2</sup> for J.H. to testify via closed circuit television. The trial court made extensive findings and concluded that J.H. would be allowed to so testify.<sup>3</sup>

The trial court then turned “to the Defense request for a mistrial[,]” which had been made by Millighan and joined by Hulbert. Hulbert’s attorney told the court that there was “no continuity as to how the witness is presented.” Millighan’s attorney further explained:

[O]ur concern is that ... the jury has already seen the child come in and attempt to testify, and now will be coming back and

---

<sup>2</sup> See WIS. STAT. § 972.11; *Maryland v. Craig*, 497 U.S. 836, 857 (1990).

<sup>3</sup> The decision to allow J.H. to testify via closed circuit television is not challenged on appeal.

seeing a different setup. And our concern is that at some level they're going to conclude[] that the [c]ourt is trying to protect or assist or help the alleged victim because this really did happen, she really was assaulted, and we're just trying to protect her. That will give the jury the sense that everybody kind of thinks this happened.

Defense counsel argued that a mistrial would allow the use of closed-circuit television to be addressed prior to trial and through voir dire of the new jury, and that there would be less chance of prejudice because J.H.'s testimony would be given by a single method for its entirety.<sup>4</sup>

The trial court asked whether the change in format could be addressed with a curative jury instruction. Hulbert's attorney argued that "given how serious the allegations are here that a curative instruction will not be sufficient and the only thing that we can do here is get a fresh set of jurors to be ... able to address those issues." The trial court denied the mistrial.

Prior to J.H.'s testimony, the trial court gave a cautionary jury instruction, explaining that the closed-circuit television procedure was "authorized by law" and the jury should not "consider the use of closed-circuit television as evidence against the ... defendants in any way. The use of closed-circuit television does not raise any inference of guilt." The jury ultimately acquitted Hulbert on one of the victim intimidation charges but convicted her on the remaining four offenses. The trial court imposed concurrent and consecutive sentences totaling fourteen years and ten months of imprisonment. Hulbert appeals.

"A motion for mistrial is committed to the sound discretion of the circuit court." *State v. Ford*, 2007 WI 138, ¶28, 306 Wis. 2d 1, 742 N.W.2d 61. "Generally, in determining whether to

---

<sup>4</sup> The State pointed out that the defense, when arguing against the State's pretrial motion to have J.H. testify via closed-circuit television, claimed that the format would be prejudicial because the jury would notice that J.H. was the only witness testifying in that manner.

grant a mistrial in cases where there is no structural error, the circuit court must decide, in light of the entire facts and circumstances, whether the defendant can receive a fair trial.” *Id.*, ¶29. That is, the trial court “examines whether the claimed error is sufficiently prejudicial to warrant a mistrial.” *Id.*

On appeal, Hulbert abandons the continuity argument and says that “[t]he issue here is whether the jury could disregard seeing [J.H.] walk into the courtroom, look at the defendants and become unable to communicate or whether the circuit court should have granted a mistrial.” She asserts that “had a mistrial been granted, the new jury would not have seen the melt down of the witness or the refusal of the witness to communicate in the presence of the defendants.”

However, as the trial court explained in denying the mistrial, J.H. was going to be emotional no matter what method she used to testify. Indeed, while testifying via closed-circuit television, J.H. began to cry when the State asked questions about Millighan. Because of this, J.H. was allowed to give some answers by writing them in a notebook. We are unpersuaded that any error arising from J.H.’s aborted first attempt at testifying was so prejudicial as to warrant a mistrial, therefore we are unconvinced that the trial court erroneously exercised its discretion in denying Hulbert’s motion.

IT IS ORDERED that the judgments 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*