STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case Nos. 2018AP55-CR, 2018AP56-CR & 2018AP57-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MARIES D. ADDISON,

Defendant-Appellant.

ON APPEAL FROM JUDGMENTS OF
CONVICTION AND AN ORDER ENTERED IN
THE MILWAUKEE COUNTY CIRCUIT COURT,
THE HONORABLE ELLEN R. BROSTROM AND
THE HONORABLE MARK A. SANDERS, PRESIDING

BRIEF AND SUPPLEMENTAL APPENDIX OF PLAINTIFF-RESPONDENT

BRAD D. SCHIMEL
Attorney General of Wisconsin

HANNAH S. JURSS
Assistant Attorney General
State Bar #1081221

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 264-9444
(608) 266-9594 (Fax)
jursshs@doj.state.wi.us

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ISSUES PRESENTED

1. Did the State violate Defendant-Appellant Maries D. Addison's constitutional right to a speedy trial when his trial involving over twenty counts and multiple victims began roughly seventeen months after the State filed the first complaint?

The circuit court answered "no."

This Court should answer "no."

2. Did the circuit court erroneously exercise its discretion when denying defense counsel's motion to withdraw less than three weeks before trial? Did the court then fail to conduct a sufficient *Klessig* colloquy and err when concluding Addison was competent to represent himself?

The circuit court answered "no."

This Court should answer "no."

3. The circuit court advised Addison he could have Bibles in the courtroom but could not display them to the jury as demonstrative evidence. Addison continued to display them. Did the circuit court violate Addison's right to free exercise of religion when it removed his Bibles from the courtroom?

The circuit court answered "no."

This Court should answer "no."

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not seek oral argument or publication.

INTRODUCTION

Addison appeals the circuit court's denial of his postconviction claims following his consolidated jury trial. Addison fails to develop and support key components of his claims, and this Court should reject all three.

The State did not violate Addison's speedy trial right. The record shows moderate delays caused by both parties and no delays weighing heavily against the State. Addison's actions after his initial speedy trial request undermined his request. He does not show prejudice, as he makes only conclusory, unsupported claims.

The circuit court properly denied Addison's request to have his attorney withdraw so he could receive new, specific appointed counsel within three weeks of trial. The court reasoned through the disagreements Addison had with counsel and concluded no real conflict existed. Addison, a college-educated man, then made a knowing, voluntary, and intelligent decision to represent himself. The court performed a thorough *Klessig* colloquy and properly determined Addison was capable of self-representation.

Addison now second-guesses that decision, but the court's decision denying the change of attorneys did not render his subsequent choice not a deliberate one. His lack of courtroom experience and belief in Jesus did not mean he could not competently represent himself. The trial record reflects an intelligent man capable of self-representation who wished to be in control; Addison was a competent man who referenced religion when frustrated with the court's decisions.

Addison also fails to show any violation of his right to free exercise of religion from the court removing his Bibles from the courtroom after he disregarded its order not to display them. He does not challenge the statutes the court relied on and does not develop his constitutional challenge to

his convictions. Even if this Court addresses this claim, the court did not violate his free exercise rights given its efforts to accommodate his desire to have religious materials.

STATEMENT OF THE CASE

The State charged Addison with over twenty counts involving the sexual and physical assault, kidnapping, and trafficking of women he prostituted. (R. 1; 18AP56, R. 1; 18AP57, R. 1.)[1] The Honorable Dennis Cimpl originally presided. (R. 128.)

The circuit court, the Honorable Rebecca Dallet now presiding following a judicial transfer, joined the cases for trial and granted Addison's request to represent himself at trial. (R. 142:4; 147, R-App. 101–40.)

Following another judicial transfer, the Honorable Ellen Brostrom presided over Addison's 13-day trial. (R. 148–70.)[2] The jury convicted him of 17 counts and acquitted him of five. (R. 170; *see also* 18; 128:1–3, A-App. 112–14) (trial information and postconviction decision listing convictions.)[3]

Addison, by counsel, filed a postconviction motion arguing: (1) his convictions should be dismissed because the State violated his constitutional speedy trial right; (2) the court should hold a hearing to determine whether he was competent to represent himself and order a new trial; and (3)

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[1] Except where indicated, all record citations are to appeal number 2018AP55-CR.

[2] A few transcripts are out of order in the electronic record. (*See* R. 148–49; 168–69.)

[3] Addison also faced trial on one count in Milwaukee County case number 2011-CF-4002. The State dismissed it during trial. (R. 165:16.)

the court should order a new trial because it denied his right to free exercise of religion when it removed his Bibles from the courtroom during trial. (R. 121, A-App. 126–46.) The court, the Honorable Mark A. Sanders presiding, denied his claims without a hearing after briefing. (R. 126–28.)

The State discusses additional facts relevant to each claim in the Argument.

ARGUMENT

I. The State did not violate Addison's constitutional right to a speedy trial.

A. Relevant facts

The pre-trial period. On March 7, 2011, the State filed the complaint in Milwaukee County case number 2011-CF-1079; it amended it the next day. (R. 1; 3.)

On March 15, 2011, Addison entered a speedy trial demand. (R. 136:48.)

On March 21, 2011, the State stated it would file a complaint in another case involving the "same kind of things" with "additional victims" and would seek joinder. (R. 137:2.)

On April 7, 2011, the State explained it needed more time to talk with a victim before filing the new complaint. (R. 138:4.) The court noted there would be "no way" trial would occur on the scheduled May 31, 2011, date if it granted joinder. (R. 138:5–6.) The State was unsure whether it had turned over all of the discovery given how much it received from the police. (R. 138:9–10.)

On April 15, 2011, the State filed the complaint in Milwaukee County case number 2011-CF-1664. (18AP56, R. 1.)

On April 18, 2011, the State filed a motion to consolidate the cases for trial. (R. 9.) The parties agreed to a

short adjournment (from April 25 to May 2) of the preliminary hearing in 2011-CF-1664, as the district attorney had a scheduled vacation. (18AP56, R. 132.)

Addison's attorney filed a motion to withdraw on May 2, 2011. (18AP56, R. 3.)[4] On May 16, 2011, he advised that Addison failed to pay his retainer. (R. 140:3.) The court told Addison he would not have trial on May 31 as he needed a new lawyer and faced new charges. (R. 140:6–7.) It removed the May 31 date and "[t]oll[ed] the time limits for a speedy trial." (R. 140:9–10.)

Addison appeared with newly-appointed counsel on May 31, 2011. (R. 141.)

On June 21, 2011, the State filed the complaint in case number 2011-CF-2881. (18AP57, R. 1.)

The preliminary hearing in 2011-CF-2881 began on June 29, 2011, but was continued, as the court ran out of time. (18AP57, R. 127:4–5, 36.)

On June 29, 2011, the State filed a motion to consolidate the cases for trial. (18AP57, R. 3.)

Online records reflect the court granted the parties' off-the-record adjournment request of a June 30, 2011, consolidation hearing because the preliminary hearing had not been completed in 2011-CF-2881.[5]

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[4] A different attorney appeared at Addison's first initial appearance. (R. 135.) Addison's retained attorney represented him thereafter until withdrawing. (R. 135–40.) The State refers to retained counsel as his "first attorney" and appointed counsel as his "second."

[5] (*See* R. 141); circuit court case log entry for June 29, 2011, in 2011-CF-1664. All online records cited are available at http://wcca.wicourts.gov.

Addison submitted a *pro se* letter to the court on July 14, 2011, in part noting his new attorney would not enter a speedy trial request. (18AP56, R. 6:2.)

The preliminary hearing in 2011-CF-2881 was adjourned a second time on July 19, 2011, as the district attorney was in trial. (18AP57, R. 128.) When the State's witnesses did not appear at the continued date on August 4, 2011, defense counsel explained "every time we delay in prelim [sic], we are delaying the other two cases." (18AP57, R. 129:4–5.) The court dismissed one of the counts without prejudice. (R. 129:8–9.)

On August 23, 2011, the court granted the State's joinder motion. (R. 142:5.) The defense did not object. (R. 142:5.)

Defense counsel explained she had "most, if not all, of the discovery." (R. 142:4.) The State believed it provided all of it, but would give counsel a new complete set because of its volume. (R. 142:4.) The court scheduled trial for December 5, 2011. (R. 142:5.)

Online records reflect the court granted a defense adjournment of the final pre-trial date "as defense [was] still investigating."[6]

Defense counsel moved to adjourn the trial on November 14, 2011. (R. 143:2–3.) Counsel stated she was still investigating, did not have an offer involving the new cases, and injured her foot, which caused lost work time. (R. 143:2–3.) Counsel stated Addison wanted her to be "fully prepared." (R. 143:3.)

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[6] Circuit court entry in 2011-CF-1079 for November 9, 2011.

The State was ready for the trial on December 5. (R. 143:3.) The court granted the defense adjournment request and rescheduled trial to February 21, 2012. (R. 143:4–6.)

Online records reflect the court adjourned the February 21, 2012, date for another trial. The court scheduled a hearing for April 19, 2012, and trial on June 18, 2012.[7]

Online records reflect the April 19 hearing was rescheduled for May 14, 2012, because the district attorney was in trial.[8]

At that hearing, defense counsel discussed additional discovery she wished to receive. (R. 145:2–10.) Counsel explained she needed "this disk of [Addison's] phone." (R. 145:11.) The State noted it would ask police. (R. 145:11.) The trial remained on for June 18. (R. 145:14.)

The defense sought another trial adjournment on June 18, 2012. (R. 146:3–4.) Addison's phone records had not been turned over to the district attorney "until recently" and not to the defense until the week before trial. (R. 146:2.) Counsel needed more time to go through it. (R. 146:3.) The State was ready but agreed the records contained "a ton of material." (R. 146:4–5.)

The court granted the adjournment. (R. 146:5.) It found "the State didn't try to withhold this in any way, but it took a lot of time to get it downloaded and get it over to the defense." (R. 146:5.)

The court scheduled a pre-trial hearing for July 24, and the trial for August 13, 2012. (R. 146:7.) At the pre-trial,

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[7] Circuit court entry in 2011-CF-1079 for February 17, 2012.

[8] Circuit court entry in 2011-CF-1079 for April 19, 2012.

defense counsel moved to withdraw at Addison's request. (R. 147:3, R-App. 103.) The court allowed Addison to proceed *pro se*. (R. 147, R-App. 101–40.)

The trial began on August 13, 2012, approximately one year and five months after the State filed the first complaint. (R. 149.) At no point pre-trial did the defense move to dismiss the charges for a speedy trial violation. (*See generally* 18AP55–57 R.)

Postconviction litigation. Addison asked for dismissal of the charges on speedy trial grounds. (R. 121, A-App. 126–46). He argued he did not personally consent to his attorney's adjournment requests, but he did not allege ineffective assistance. (R. 121:9, A-App. 134.)

He asserted he suffered medical ailments while in jail and the delay prejudiced his defense. (R. 121:9, A-App. 134). He did not attach any jail records. (R. 121, A-App. 126–46.)

The court denied his motion via written order. (R. 126–128, A-App. 112–25.) It concluded the State was responsible for delay of "almost four months," and the court's calendar was responsible for another four. (R. 128:7, A-App. 118.) It found the State's delays "did not relate to flagrant or outrageous conduct," or "negligence." (R. 128:7, A-App. 118.) It did not address Addison's arguments about discomfort in jail but rejected as "conclusory" his claims of prejudice to his defense. (R. 128:8, A-App. 119.)

B. Standard of review

This Court accepts the circuit court's historical fact-findings unless clearly erroneous but reviews independently whether the application of the law demonstrates a speedy trial violation. *State v. Blanck*, 2001 WI App 288, ¶ 12, 249 Wis. 2d 364, 638 N.W.2d 910; *State v. Urdahl*, 2005 WI App 191, ¶ 10, 286 Wis. 2d 476, 704 N.W.2d 324.

C. Principles of law

A defendant has a right to a speedy trial. U.S. Const. amends. VI, XIV; Wis. Const. art. I, § 7. It (1) prevents oppressive pretrial incarceration; (2) minimizes anxiety and concern of the defendant; and (3) limits the possibility the defense will be impaired. *Barker v. Wingo*, 407 U.S. 514, 519–22 (1972). The last concern is most important. *Id.* at 532.

The speedy trial right differs from others. "[D]eprivation" of a speedy trial "may work to the accused's advantage." *Barker*, 407 U.S. at 521. Additionally, "there is a societal interest" working separate from the accused's. *Id.* at 519–20. Lastly, it is more "vague"—there is no "fixed point" where the right is violated. *Id.* at 521–22. The right is thus "consistent with delays and depends upon circumstances." *Id.* at 522 (citation omitted).

Courts employ a four-part balancing test considering (1) the length of delay; (2) the reason for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) whether the delay resulted in any prejudice to the defendant. *Barker*, 407 U.S. at 530; *State v. Borhegyi*, 222 Wis. 2d 506, 509, 588 N.W.2d 89 (Ct. App. 1998).

Courts determine whether a violation occurred under the totality of the circumstances. *Urdahl*, 286 Wis. 2d 476, ¶ 11. "A requirement of unreasonable speed would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself." *Barker*, 407 U.S. at 521 n.15 (citation omitted). The goal is that justice be "swift but deliberate." *Scarbrough v. State*, 76 Wis. 2d 87, 101, 250 N.W.2d 354 (1977).

If a constitutional speedy trial violation occurred, "the unsatisfactorily severe remedy" of dismissal is required. *Barker*, 407 U.S. at 522; *Borhegyi*, 222 Wis. 2d at 509–10.

D. The totality of circumstances show the less than one-and-one-half-year delay did not violate Addison's right to a speedy trial.

1. The delay is presumptively prejudicial, though shorter than many deemed constitutional.

To evaluate a speedy-trial claim, the clock begins when the defendant formally becomes the accused, such as with the filing of a complaint. *State v. Lemay*, 155 Wis. 2d 202, 209, 216, 455 N.W.2d 233 (1990).

Consideration of the length of delay serves as a trigger: "[u]ntil there is some delay which is presumptively prejudicial, there is no necessity for inquiry into other factors." *Barker*, 407 U.S. at 530. "Depending on the nature of the charges, the lower courts have generally found post accusation delay 'presumptively prejudicial' at least as it approaches one year." *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992) (citation omitted).

The delay here equals roughly one year and five months, from the first complaint on March 7, 2011, to the start of trial on August 13, 2012. (*See* R. 1; 149.) Addison starts the clock one day later upon confinement, but it began with the complaint. (Addison's Br. 12); *see Lemay*, 155 Wis. 2d at 216.

Addison calculates "1 year, 5 months, 20 days"—539 days—from his confinement on March 8, 2011, to the *end* of trial on August 28, 2012. (*See* Addison's Br. 12). The correct calculation ends at the "commencement of the trial." *See, e.g., State v. Williams*, 2004 WI App 56, ¶¶ 32–41, 270 Wis. 2d 761, 677 N.W.2d 691 (assessing delay up to the "date of the trial").

The over one-year delay was presumptively prejudicial; the State therefore addresses the other factors.

See Green v. State, 75 Wis. 2d 631, 635, 250 N.W.2d 305 (1977).

Nevertheless, this delay—particularly given the "nature of the charges"—was far shorter than others deemed constitutional. *See Doggett*, 505 U.S. at 652 n.1 (presumptive prejudice varied among courts depending on "nature of the charges"); *Barker*, 407 U.S. 514 (over five-year delay "extraordinary" but constitutional); *Norwood v. State*, 74 Wis. 2d 343, 246 N.W.2d 801 (1976) (twenty-two months delay constitutional); *State v. Leighton*, 2000 WI App 156, ¶¶ 5–26, 237 Wis. 2d 709, 616 N.W.2d 126 (over two-year delay constitutional); *but see Doggett*, 505 U.S. 647 (eight-and-one-half year delay unconstitutional).

Given the high number of counts and multiple victims, the one-year-and-five-month delay was not "extraordinary." *See Doggett*, 505 U.S. at 652 n.1; *Barker*, 407 U.S. at 533.

2. At most, only eight months of delay may be attributed to the State, and none of that time weighs heavily against it.

"When considering the reasons for the delay, courts first identify the reason for each particular portion of the delay and accord different treatment to each category of reasons." *Urdahl*, 286 Wis. 2d 476, ¶ 26. Only delays attributable to the State may be considered. *See Norwood*, 74 Wis. 2d at 354.

Deliberate attempts to delay trial weigh heavily against the State. *Urdahl*, 286 Wis. 2d 476, ¶ 26. Delays caused by negligence or overcrowded courts, though still counted, weigh "less heavily." *Id.*

Some delays do not count at all. If the delay is "caused by something intrinsic to the case, such as witness unavailability, that time period is not counted." *Urdahl*, 286 Wis. 2d 476, ¶ 26. Delays which "can reasonably be

attributed to the ordinary demands of the judicial system" do not count. *Norwood*, 74 Wis. 2d at 354. The State is not faulted for delays caused by the complexity of the case. *See State v. Shears*, 68 Wis. 2d 217, 232, 229 N.W.2d 103 (1975). Lastly, delays caused by the defendant are "not counted." *Urdahl*, 286 Wis. 2d 476, ¶ 26.

Here, only eight months at most weigh against the State, none heavily:

March 7, 2011 (filing of the first complaint) to May 31, 2011 (original trial date): This time period does not weigh against the State. The trial date remained on the calendar until Addison's first attorney withdrew. (R. 140:3–8.)

Addison argues the State "initially delayed proceedings for its convenience as it decided to bring additional charges against Addison." (Addison's Br. 13.) This argument fails.

First, it suggests without support that the State intentionally delayed charging to gain advantage. The record instead reflects the State (1) made clear within one week of Addison's speedy trial demand it would file additional charges and seek joinder; and (2) it had not done so because it needed more time to talk with a victim. (R. 137:2; 138:4.)

Second, it overlooks that Addison's attorney withdrew, which necessarily caused delay. (*See* R. 140:9–10.) Thus, even if this Court were otherwise inclined to weigh this period against the State, Addison's attorney's withdrawal negates that weight.

June 1, 2011, to July 18, 2011: This period does not weigh against the State. Addison does not argue otherwise. The preliminary hearing in 2011-CF-2881 did not finish on June 29, because the court ran out of time. (R. 127:56.) This falls to the "ordinary demands of the judicial system." *See Norwood*, 74 Wis. 2d at 354.

July 19, 2011 (adjourned preliminary hearing in 2011-CF-2881) to August 23, 2011 (court granting joinder motion): This roughly two-month delay weighs against the State. The district attorney sought adjournment of the preliminary hearing in 2011-CF-2881 on July 19 because she was in trial. (18AP57, R. 128). This, in turn, delayed the court's decision on joinder. (*See* R. 142:5; 18AP57, R. 129:4–5). With no deliberate attempt to delay, this period does not weigh heavily against the State. *See Urdahl*, 286 Wis. 2d 476, ¶ 26.

August 24, 2011, to February 20, 2012: This period does not weigh against the State. The defense did not object to joinder, and the court set the December 5, 2011, trial date. (R. 142:5.) The State was ready for trial on December 5. (R. 143:3.) Defense counsel sought adjournments for investigation and her injury. (R. 143:2–4.)

February 21, 2012 (adjourned trial date) to June 17, 2012: This roughly four-month period may be attributed to the court's overcrowded calendar. (*See* 128:5–6, A-App. 116–17) (court rescheduled trial to June 18, 2012).) Though not directly the State's doing, it still weighs against the State. *See Urdahl*, 286 Wis. 2d 476, ¶ 26 (overcrowded courts weigh "less heavily" against the State).

June 18, 2012 (adjourned trial date) to August 13, 2012 (start of trial): This roughly two-month delay weighs against the State. Though the defense sought the adjournment to review the phone records provided to it the week before, the State recognized the records contained a "ton of material." (R. 146:3–5.)

The postconviction court calculated this delay starting on June 11, 2012, when the State gave the records to the defense. (R. 128:7, A-App. 118.) The delay instead started one week later, on June 18, 2012, when counsel explained she needed more time and the trial was actually delayed. (*See* R. 146.)

This two-month delay does not weigh heavily against the State. The circuit court found the "State didn't try to withhold this in any way, but it took a lot of time to get it downloaded and get it over to the defense." (*See* R. 146:5; *see also* Addison's Br. 13 (recognizing the delay "may not have been an intentional effort to delay proceedings").)

Thus, at most, only about eight months weigh against the State: two months for the preliminary hearing delay, four months for the court's calendar, and two months for the phone records. None of it weighs heavily against the State. *See Urdahl*, 286 Wis. 2d 476, ¶ 26.

3. Addison's actions after his initial speedy trial demand weaken his claim.

A defendant's assertion carries strong weight in assessing a speedy trial claim. *Barker*, 407 U.S. at 531–32. The question, however, is "[w]hether *and how* the defendant asserts his right." *Barker*, 407 U.S. at 531 (emphasis added).

In *Williams*, this Court noted the defendant "acted inconsistently with his assertion of the speedy trial right by either affirmatively requesting or acquiescing in a delay in the commencement of the trial." *Williams*, 270 Wis. 2d 761, ¶ 41. "These requests for, and consents to, the adjournments significantly diminish the weight of his demand for a speedy trial." *Id.*

The same is true here. Addison entered a speedy trial demand about one week after the first complaint was filed. (R. 136:48.) He did not, however, renew that request after his first attorney withdrew. (*See generally* R. 140–48.)

He did not object to the State's joinder motion and did not renew his request once the cases were joined. (*See generally* R. 142–48.) The defense also obtained multiple adjournments. (R. 143:2–3; 146:3–4.)

Addison argues he did "not personally consent" to adjournment requests. (Addison's Br. 14.) Defense counsel, however, specifically noted in seeking to adjourn the December 5, 2011, trial date that Addison wanted her to be "fully prepared." (R. 143:3). This signifies Addison accepted delays where beneficial to his defense. Moreover, Addison did not and does not argue ineffective assistance of counsel. (*See generally* R. 121, A-App. 126–46; 127; Addison's Br.) He thereby forfeited any challenge to his attorney's requests. *State v. Dowdy*, 2012 WI 12, ¶ 5, 338 Wis. 2d 565, 808 N.W.2d 691 ("[a]s a general rule, issues not raised in the circuit court will not be considered for the first time on appeal").

Addison's actions after invoking his right thus "significantly diminish" the weight this Court should assign his initial assertion. *See Williams*, 270 Wis. 2d 761, ¶ 41.

4. Addison's unsupported, conclusory assertions do not establish prejudice from the delay.

Courts evaluate whether a defendant suffered prejudice in light of the interests protected: (1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the defendant; and, most importantly, (3) limiting the possibility the defense will be impaired. *Urdahl*, 286 Wis. 2d 476, ¶ 34.

Impairment occurs if witnesses die or disappear, defense witnesses are unable to recall events, or a defendant is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. *Scarbrough*, 76 Wis. 2d at 98.

A defendant need not prove prejudice to prevail, but a lack of prejudice weighs against a violation. *Leighton*, 237 Wis. 2d 709, ¶ 25; *see, e.g.*, *Barker*, 407 U.S. at 534.

"Self-serving assertions by a defendant based on mere speculation cannot serve as the grounds for a finding of actual prejudice." *Blanck*, 249 Wis. 2d 364, ¶ 23 (citation omitted) (rejecting a prejudice argument in a pre-charging delay due process challenge). Our courts have repeatedly rejected undeveloped, conclusory assertions of prejudice in speedy trial claims. *See, e.g.*, *Urdahl*, 286 Wis. 2d 476, ¶ 36; *Hatcher v. State*, 83 Wis. 2d 559, 570, 366 N.W.2d 320 (1978); *Leighton*, 237 Wis. 2d 709, ¶ 24.

In *Urdahl*, this Court rejected as too speculative an argument that it was "unlikely" a witness "was still around" by the time of trial. *Urdahl*, 286 Wis. 2d 476, ¶ 36. This Court should do the same here.

Without explanation, Addison argues the "State's lack of organization in getting the electronic evidence to [counsel] and Addison prejudiced Addison's ability to be properly prepared for trial and probably contributed to his distrust of [counsel] whom he discharged." (Addison's Br. 15). How?

This Court should reject his conclusory claim about trial preparation, particularly given that the court granted defense counsel's adjournment request to review Addison's phone records and ordered he have access to electronic records in jail once he chose to represent himself. (*See* R. 146:3–4; 147:34, R-App. 134).

Addison recognizes his argument about distrusting counsel is speculative. (*See* Addison's Br. 15 ("*probably* contributed") (emphasis added).) He makes no attempt to connect the dots and fails to explain how doing so would establish prejudice given that *he* chose to proceed *pro se*.

Addison's unsupported arguments about ailments in jail similarly fail. (*See* Addison's Br. 14.) Addison neither attached "jail medical records" to his postconviction motion nor provided any support for his assertions. (*See* R. 121, A-App. 126–46.) He does not explain whether his alleged

ailments resulted from incarceration (as opposed to ailments he otherwise suffered). Addison's unsupported "[s]elf-serving assertions" do not show prejudice. *See Blanck*, 249 Wis. 2d 364, ¶ 23. Even if this Court accepts them, he fails to show any prejudice to his defense—the most important consideration. *See Urdahl*, 286 Wis. 2d 476, ¶ 34.

5. The totality of circumstances do not reflect a speedy trial violation.

Taken together, the *Barker* factors reveal, at most, moderate delays that do not weigh heavily against the State. Addison's actions after his initial demand weaken his argument, as does his inability to establish any prejudice. The less than one-year-and-one-half delay did not violate Addison's speedy trial right. This Court should affirm the court's order denying his motion to dismiss the charges.

II. The circuit court did not erroneously exercise its discretion by denying defense counsel's motion to withdraw less than three weeks before trial, and the court then engaged in a thorough *Klessig* colloquy and properly concluded Addison was competent to represent himself, as he so wished.

A. Relevant facts

Addison's decision to proceed pro se and the court's colloquy. Following adjournments of prior dates, Addison's trial was set for August 13, 2012. (R. 146:7.) Less than three weeks before trial, Addison's attorney—who represented him since May 2011—advised that Addison no longer wanted her as counsel. (R. 147:3, R-App. 103; 141:2 (noting appointment of counsel at hearing on May 31, 2011).)

Addison expressed frustration she did not pursue leads or show concern over text messages he believed missing from the phone records. (R. 147:4–5, R-App. 104–05.) Counsel

explained her investigator was pursuing the lead, and she spent hours reviewing the messages with Addison. (R. 147:5–6, R-App. 105–06.)

Counsel explained Addison yelled at her and wished "to control every interaction." (R. 147:6–7, R-App. 106–07.) He reported her to the Office of Lawyer Regulation (OLR); the court had "plenty" of attorneys represent clients who reported them. (R. 147:6, R-App. 106.)

The court asked the State about trial preparation. (R. 147:10, R-App. 110.) The State explained it had "bankers boxes full of file[s]" it re-reviewed given the rescheduled trial and that it had worked to keep track of difficult-to-locate witnesses. (R. 147:10–11, R-App. 110–11.)

The court denied the withdrawal motion. (R. 147:12, R-App. 112.) It was the "final hours" for a trial "that's been set four times." (R. 147:12, R-App. 112.) It expressed concern over the "huge inconvenience" for witnesses involved. (R. 147:14, R-App. 114.)

It concluded Addison's "11-th hour request" "sounds to me like" "a delay tactic." (R. 147:12–14, R-App. 112–14.) It noted this was the first it heard of these issues. (R. 147:14, R-App. 114.) It did not see "a real conflict" between them and concluded the trial would proceed on August 13. (R. 147:14, R-App. 114.)

Addison stated: "I'll represent myself then." (R. 147:14, R-App. 114.) "She's not gonna [sic] represent me. She's not in my favor. I refuse to have her represent me, period. I refuse." (R. 147:15, R-App. 115.)

The court began a colloquy with Addison about his decision to proceed *pro se*. (R. 147:15–16, R-App. 115–16.)

The court asked whether he gave this thought or if it was a "gut reaction" to getting unwanted news. (R. 147:15, R-App. 115.) Addison stated he would not let counsel

represent him. (R. 147:15, R-App. 115.) He was concerned she did not have a "good memory" and needed "someone sharp." (R. 147:15–16, R-App. 115–16.)

The court asked, and Addison confirmed, he did not have drugs or alcohol in the previous 24 hours. (R. 147:16, R-App. 116.) The court asked, and Addison confirmed, he understood the charges and penalties. (R. 147:17–19, R. App. 117–19).

Addison asked whether Attorney James Toran, who had not represented him here, could assist as standby counsel. (R. 147:19, R-App. 119.) The court found "no possibility" Attorney Toran could be prepared in three weeks. (R. 147:19, R-App. 119.) It explained that, if Addison represented himself, he would have his current attorney as standby counsel "who's read every text message, who knows all this information." (R. 147:20, R-App. 120.)

Addison was 28 years old and completed two years of college. (R. 147:20, R-App. 120). He studied marketing management and worked as a telemarketer and marketing associate. (R. 147:20, R-App. 120.)

When asked whether he had understood the court proceedings thus far, he answered "[s]omewhat." (R. 147:21, R-App. 121.) He confirmed he did not have any "medical or emotional problem[s]" affecting his ability to be alert. (R. 147:21, R-App. 121.)

He confirmed he understood his rights to counsel and to represent himself; he did not believe his attorney understood more about the law than him, though he did not attend law school and did not know the rules of evidence. (R. 147:21–22, R-App. 121–22.)

When asked whether he understood what he could "introduce as documents" in court, he answered: "I can learn." (R. 147:22, R-App. 122.)

The court explained his attorney would know helpful strategies; Addison answered Attorney Toran would, too. (R. 147:22.) The court stated they would not discuss Attorney Toran further. (R. 147:22, R-App. 122.)

When the court again asked if he understood an attorney would know better strategies, Addison answered "I'm not gonna [sic] let you do this. No. I need a lawyer that cares about me and I know that can win the case. I'm not putting my . . . life in her hands." (R. 147:22, R-App. 122.)

The colloquy continued:

> THE COURT: Do you understand if you give up your constitutional rights to an attorney there's no one in this courtroom whose only responsibility is to look after and protect your legal rights[?]
>
> THE DEFENDANT: I have somebody here to protect me and you better know his name is Jesus Christ, and I'm going back to him to make sure I never see a prison cell behind this mess.
>
> THE COURT: Do you understand that if you give up your right to an attorney, there's no one else in the courtroom whose only responsibility it is to look after and protect your legal rights?
>
> THE DEFENDANT: There is someone in here. You just can't see him.
>
> THE COURT: Do you understand that for those reasons it's usually more difficult to represent yourself and easier to have the assistance of an attorney?
>
> THE DEFENDANT: I need an attorney who cares.
>
> THE COURT: Do you want to give up your right to an attorney and exercise your right to represent yourself?
>
> THE DEFENDANT: Yes.

(R. 147:23, R-App. 123.)

When the court asked if anyone pressured him, Addison said his attorney did because she did not give him "confidence." (R. 147:24–25, R-App. 124–25.) Addison confirmed no one promised him anything to give up his right to counsel and chose to do so of his own free will. (R. 147:25–26, R-App. 125–26.)

When the court asked whether he had enough time to decide, he said no. (R. 147:26, R-App. 126.) The court asked what he meant, and he clarified: "I just made up my mind now." (R. 147:26, R-App. 126.) The court asked if his mind was made up, and he said he had "no choice." (R. 147:26, R-App. 126.)

The court explained he did have a choice; he said he wanted it to be him or "someone else" besides his current attorney. (R. 147:26, R-App. 126.) He stressed that "she's not gonna [sic] try this case, she's not gonna [sic] question these witnesses." (R. 147:26, R-App. 126.)

The court concluded Addison is "intelligent and has the ability under the law to represent himself" and was making the choice to do so voluntarily with an understanding of the disadvantages of self-representation. (R. 147:27, R-App. 127.) The court accepted his waiver of counsel and asked his attorney to serve on standby. (R. 147:27–28, R-App. 127–28.)

After further advising Addison about his responsibilities moving forward, the court asked if this "is still what you want to do"—he answered "[y]es." (R. 147:33–38, R-App. 133–38.)

The trial. Addison questioned prospective jurors, made legal arguments, questioned witnesses, presented evidence, and responded and adjusted to objections. (*See, e.g.*, R. 148:96–104, 159–61; 151:42–48; 152:25–26; 153:63–64; 155:14–16; 156:18–19.)

Addison one day wished to "put on-the-record" that the court was "impartial in all of [its] rulings." (R. 157:6, R-App. 146.) If the court ruled against him on an evidentiary issue, however, Addison sometimes said the "blood of Jesus" was "against" the court. (*See, e.g.*, R. 158:101; 161:105, 112; 163:212–14.)

At one point, the court advised Addison he could have standby counsel step in if he changed his mind. (R. 153:4–5). He continued on his own. (*See* R. 153.)

Postconviction litigation. Addison argued the court erred by not allowing him to get new appointed counsel and allowing him to proceed *pro se*. (R. 121:10–14, A-App. 135–39.) Addison asserted a "psychological examination may be warranted" and asked for a hearing. (R. 121:14, A-App.139.)

The court denied Addison's motion via written order. (R. 128:8–15, A-App. 119–25.) It saw no error in its denial of his request to change attorneys and found its "extensive colloquy" sufficient to uphold his "unequivocal refusal" to proceed with counsel and instead represent himself. (R. 128:14–15, A-App. 124–25.)

B. Standards of review

Whether to allow a change of attorney lies within the circuit court's discretion. *State v. Lomax*, 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988). This Court will not disturb the court's judgment absent an erroneous exercise of discretion. *State v. Jones*, 2010 WI 72, ¶ 23, 326 Wis. 2d 380, 797 N.W.2d 378.

To determine whether a defendant knowingly waived the right to counsel, this Court independently applies constitutional principles to the facts. *State v. Klessig*, 211 Wis. 2d 194, 204, 564 N.W.2d 716 (1997).

A circuit court's determination of a defendant's competency to proceed *pro se* "will be upheld unless totally

unsupported by the facts." *Pickens v. State*, 96 Wis. 2d 549, 569–70, 292 N.W.2d 601 (1980), *overruled on other grounds by Klessig*, 211 Wis. 2d at 206. At the same time, it should be consistent with constitutional standards. *See, e.g.*, *Imani v. Pollard*, 826 F.3d 939 (7th Cir. 2016) (ordering a new trial because the state court's conclusion that the defendant was not competent was contrary to *Faretta v. California*, 422 U.S. 806 (1975)).

C. Principles of law

A defendant has the right to counsel and to represent himself. U.S. Const. amend. VI; Wis. Const. art. I, § 7. Indigent defendants do *not* have a "right to an attorney of their own choice or the right to successive appointments." *State v. Suriano*, 2017 WI 42, ¶ 21, 374 Wis. 2d 683, 893 N.W.2d 543.

When considering whether a circuit court erred in denying a motion for substitution of counsel, reviewing courts must consider factors including: (1) the adequacy of the court's inquiry into the defendant's complaint; (2) the timeliness of the motion; and (3) whether the alleged conflict was so great it likely resulted in a total lack of communication preventing an adequate defense. *Lomax*, 146 Wis. 2d at 359. Courts also consider whether a defendant previously changed lawyers. *State v. Jones*, 2007 WI App 248, ¶ 13, 306 Wis. 2d 340, 742 N.W.2d 341.

When a defendant seeks to proceed *pro se*, a circuit court must verify the defendant (1) has knowingly, intelligently, and voluntarily waived his right to counsel, and (2) is competent to proceed *pro se*. *Klessig*, 211 Wis. 2d at 203.

To prove a valid waiver of counsel, a circuit court must conduct a colloquy to verify the defendant (1) made a deliberate choice to proceed without counsel, (2) was aware

of the difficulties and disadvantages of self-representation, (3) was aware of the seriousness of the charges against him, and (4) was aware of the general range of penalties that could have been imposed on him. *Klessig*, 211 Wis. 2d at 206.

Non-waiver is presumed unless the State can show waiver was knowingly entered. *Klessig*, 211 Wis. 2d at 204. If a court fails to conduct an adequate colloquy, the court must hold an evidentiary hearing on whether the defendant knowingly waived counsel. *Id.* at 206–07. *Klessig*'s procedural requirements flow from the court's supervisory power, not the Constitution. *Id*; *State v. Ernst*, 2005 WI 107, ¶¶ 18, 21, 283 Wis. 2d 300, 699 N.W.2d 92.

In determining a defendant's competency to represent himself, a court should consider factors including the "defendant's education, literacy, fluency in English, and any physical or psychological disability which may significantly affect his ability to communicate a possible defense to the jury." *Klessig*, 211 Wis. 2d at 212.

Courts should *not* "prevent persons of average ability and intelligence from representing themselves unless a specific problem or disability can be identified which may prevent a meaningful defense from being offered, should one exist." *Klessig*, 211 Wis. 2d at 212 (citation omitted).

This determination rests to "large extent" upon the judgment and experience of the trial judge. *Klessig*, 211 Wis. 2d at 212.

D. The circuit court properly exercised its discretion when it denied defense counsel's motion to withdraw less than three weeks before trial.

The record reflects a proper exercise of discretion under *Lomax*. The court inquired about Addison's complaints: his desire that counsel investigate leads and concern about text messages. (*See* R. 147:5–7, R-App. 105–

07); *Lomax*, 146 Wis. 2d at 359. The court considered the timeliness of the motion: the prior adjournments, "huge inconvenience" for the witnesses, and proximity to trial which suggested a "delay tactic." (*See* R. 147:6–14, R-App. 106–14); *Lomax*, 146 Wis. 2d at 359. The court also considered the extent of the conflict: this was the first it heard of such issues and did not believe an OLR complaint precluded counsel continuing; it concluded no real conflict existed. *(See* R: 147:6–14, R-App. 106–14); *Lomax*, 146 Wis. 2d at 359.

Addison cites *Jones* to argue a defendant is "entitled to a lawyer with whom he or she can communicate." (Addison's Br. 16 (citing *Jones*, 306 Wis. 2d 340, ¶ 13).) *Jones* is night-and-day different: the defendant had to lip-read due to a hearing impairment and struggled to read his attorney's lips; his lawyer only met with him once; the trial date was two months away; and the court only gave "conclusory" reasons for denying the change of counsel. *Jones*, 306 Wis. 2d 340.

Addison, on the other hand, sought to change attorneys for complaints the court reasoned did not present an actual conflict, at a time that would have required yet another adjournment of trial. (Addison's Br. 19) (recognizing that granting the motion would have delayed the trial).

Addison also appears to argue the court erred because he "had not previously discharged counsel." (*See* Addison's Br. 19.) He points to nothing requiring a court to allow a defendant to change counsel weeks before trial, particularly where the court finds the request to be a delay tactic. Moreover, Addison *did* previously change attorneys—he had retained counsel until counsel withdrew. (R. 140:3.)

Addison's argument also overlooks that he asked for *specific* counsel. He had no right to appointed counsel of his choosing within three weeks before trial. *See Suriano*, 374

Wis. 2d 683, ¶ 23. The circuit court did not erroneously exercise its discretion.

E. The circuit court's *Klessig* colloquy demonstrated Addison knowingly waived his right to counsel and was competent to represent himself.

1. The court verified Addison knowingly waived his right to counsel.

The court conducted a thorough *Klessig* colloquy. It established Addison's awareness of the difficulties of self-representation and seriousness of the charges and penalties; Addison makes no argument to the contrary. (R. 147, R-App. 101–40); *Klessig*, 211 Wis. 2d at 206.

The court also went above and beyond to verify Addison made a deliberate choice. *See Klessig*, 211 Wis. 2d at 206. When it asked if he thought about it, Addison made clear he refused to continue with his lawyer. (R. 147:15, R-App. 115.) The court later again asked whether he had enough time to decide; when he said no and said he felt he had "no choice," the court explained he did have a choice. (R. 147:26, R-App. 126.) Addison was still adamant. (R. 147:26, R-App. 126.) After discussing what Addison would need to do to prepare for trial, the court yet again confirmed Addison still wanted to represent himself. (R. 147:33–38, R-App. 133–38.)

Addison appears to argue that the court failed to verify he "made a deliberate choice" because his decision was "impulsive." (Addison's Br. 19–22.)

Addison mistakes a deliberate choice for an ideal one. (*See* Addison's Br. 22). Addison apparently lost his ideal choice when the court exercised its discretion and declined to allow his attorney to withdraw and appoint Attorney Toran. (R. 147:19–20, R-App. 119–20.) Section II.D., *supra*.

With this limitation of his choices set, Addison never wavered in his "unequivocal refusal" to continue forward without his attorney, on his own. (*See* R. 128:14, A-App. 124). Though he told the court he "just made up [his] mind now," he was adamant. (R. 147:26, R-App. 126.) He affirmed this decision a few days into trial. (*See* R. 153:4–5.)

Addison's reliance on *Jackson* falls short. (*See* Addison's Br. 21–22.) In *Jackson*, this Court affirmed a *denial* of the defendant's right to represent himself. *State v. Jackson*, 2015 WI App 45, 363 Wis. 2d 484, 867 N.W.2d 814. *Jackson* asked whether the lower court properly concluded the defendant did *not* knowingly waive counsel. *See id.*

This Court concluded that the circuit court properly found the defendant's "requests were impulsive" and "stemmed solely from dissatisfaction with appointed counsel." *Jackson*, 363 Wis. 2d 484, ¶ 26. This Court also noted the defendant could not answer "basic questions." *Id.* ¶ 27.

This Court in part relied on the Wisconsin Supreme Court's decision in *Imani*. *See generally Jackson*, 363 Wis. 2d 484. In *Imani*, the Court also affirmed a denial of a defendant's motion to represent himself. *State v. Imani*, 2010 WI 66, ¶ 3, 326 Wis. 2d 179, 786 N.W.2d 40. In considering the *Klessig* factors, the Court noted the defendant made a "hasty" request following an unsuccessful suppression motion. *Id.* ¶¶ 27–30.

Though not binding on this Court, the Seventh Circuit later reversed Imani's conviction; in so doing, it rejected the weight the Wisconsin Supreme Court put on the "hast[iness]" of the decision: "A court may not deny a defendant his right to represent himself because the choice is rash, hasty, or foolish." *Imani v. Pollard*, 826 F.3d at 945 n.1.

This Court need not wade into tensions between the Wisconsin Supreme Court and Seventh Circuit's *Imani* holdings here because this case stands apart from *Jackson* and *Imani*: those cases concerned whether the circuit court, consistent with *Klessig*, improperly *denied* the right to self-representation; here the court *granted* Addison's request after a lengthy colloquy.

Additionally, this record does not reflect a "hasty," unknowing decision made by someone unable to represent himself; it reflects a calculated decision—reaffirmed a few days into trial—made by a college-educated man able to represent himself. (*See* R. 147, R-App. 101–40; 153:5.)

The fact that Addison may have made his decision that day partly due to dissatisfaction with counsel does not mean it was not deliberate.

Consider *Pickens*: the court noted the defendant "felt greater confidence in his own ability to defend himself than his attorney's" and concluded his choice was deliberate. *Pickens*, 96 Wis. 2d at 563–65, *overruled on other grounds by Klessig*, 211 Wis. 2d 194. Dissatisfaction with counsel is likely a common reason for a defendant to seek self-representation.

Further, *Klessig* neither does nor should it necessitate adjournments or multiple colloquies for a defendant's constitutional choice to be "deliberate." *See generally Klessig*, 211 Wis. 2d 194.

The record reflects Addison made a deliberate, voluntary choice to waive counsel and represent himself.

2. The court verified that Addison was competent to proceed.

This Court reviews whether the circuit court's conclusion that Addison could competently represent himself

was "totally unsupported by the facts." *See Pickens*, 96 Wis. 2d at 570. It was very much supported by the facts.

The court verified Addison completed some college and had employment as a telemarketer and marketing associate. (R. 147:20, R-App. 120.); *see Klessig*, 211 Wis. 2d at 212. Addison said he "somewhat" understood the proceedings and would be able to learn what evidence he could introduce. (R. 147:21–22, R-App. 121–22.) The court confirmed Addison did not have problems affecting his ability to be alert. (R. 147:21, R-App. 121.); *see Klessig*, 211 Wis. 2d at 212.

Addison nevertheless argues the court should have further explored his "lack of court experience and delusional statement about Jesus." (Addison's Br. 20.)

Courtroom experience is not a pre-requisite to self-representation. A person of "average ability and intelligence" should be able to represent himself. *Klessig*, 211 Wis. 2d at 212. The court advised Addison an attorney would understand more about the law, but Addison said he could "learn." (R. 147:21–22, R-App. 121–22.) Addison fails to show any inadequacy in the court's consideration of his "court experience."

Second, the colloquy was not deficient because the court did not probe Addison's belief in Jesus. "A defendant's unusual conduct or beliefs do not necessarily establish incompetence for purposes of self-representation." *State v. Ruszkiewicz*, 2000 WI App 125, ¶ 43, 237 Wis. 2d 441, 618 N.W.2d 893; *Pickens*, 96 Wis. 2d at 570 (rejecting an argument that the defendant's "references to astrology or religion" prohibited him from competently representing himself), *overruled on other grounds by Klessig*, 211 Wis. 2d 194.

Addison understood his choice to represent *himself*. (*See, e.g.*, R. 147:22 ("*I* can learn"), 26 ("*it's me* or someone else besides [defense counsel], but she's not gonna [sic] try

this case"), R-App. 122, 126) (emphasis added).) The record does not reflect, for example, a belief he would not need to prepare because Jesus would actively work as his attorney. (*See generally* R. 147, R-App. 101–40.) The court's colloquy established Addison was a college-educated man with a belief in Jesus. (*See generally* R. 147, R-App. 101–40.)

Now, Addison asserts his comments about Jesus "suggested a psychological disability." (Addison's Br. 20.) He, however, fails to provide any evidence of a psychological disability, as opposed to a religious belief shared by millions around the world. *See* (R. 121, A-App. 126–46; Addison's Br.)

He tries to analogize to *Jackson* but misstates *Jackson*: he asserts this Court affirmed that the defendant, who, "suffered from schizophrenia" was not competent to represent himself. (Addison's Br. 21.) The defendant in *Jackson* did not suffer from schizophrenia or any mental illness. *See generally Jackson*, 363 Wis. 2d 484.

Instead, this Court addressed Jackson's arguments about the Supreme Court's holding involving a schizophrenic defendant in *Indiana v. Edwards*, 554 U.S. 164 (2008). *See Jackson*, 363 Wis. 2d 484, ¶¶ 16–18. There, the Court held the Constitution allows States to require representation for defendants with "severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Edwards*, 554 U.S. at 178. The record does not reflect any indication Addison suffered from a "severe mental illness."

Lastly, Addison points to the trial itself, asserting the record reflects his "great difficulty" in self-representation and "delusions about divine intervention." (Addison's Br. 20–21.) His broad assertions do not present an accurate picture of his trial.

Addison demonstrated a strong ability to represent himself. He effectively cross-examined witnesses, adjusted to

objections, and persuaded the court on evidentiary rulings. (*See, e.g.*, R. 148:96–104, 159–61; 151:42–48; 152:25–26; 153:63–64; 155:14–16; 156:18–19.) When he had procedural questions, he asked them. (*See, e.g.* R. 160:123–26.) Addison was thorough; his trial took over two weeks largely because the court allowed him long examinations. (*See, e.g.*, R. 154:67–69).

As to his references to Jesus, the trial reflects an intelligent man navigating the courtroom proceedings who, when frustrated by evidentiary rulings, would invoke religion to express his anger with the court. (*See, e.g.*, R. 158:101; 161:105, 112; 163:212–14); *see also Pickens*, 96 Wis. 2d at 570 (explaining the "proof" the defendant's religious beliefs did not cause a mental defect "lies in his actual handling of the case"). The record does not reflect a "severe mental illness."

The court's colloquy verified Addison knowingly decided to represent himself and was competent to do so. This Court should affirm its order denying his postconviction motion without a hearing.

III. The circuit court did not violate Addison's right to free exercise of religion when it removed his Bibles from the courtroom after Addison disregarded its order to not display them.

A. Relevant facts

Addison's displays and the court's admonishment and order. On the fifth day of trial, deputies advised the court that Addison had been "on and off throughout the trial, placing on [his] table, at the front of the table, right by where the jurors walk by, a crayon drawn religious picture." (R. 157:4, R-App. 144.)

The court explained he could not display religious materials: "I know you have had Bibles in the courtroom

throughout the course of the trial. You are certainly welcome to have one with you, but it can't be displayed on the table for the jury." (R. 157:4, R-App. 144.)

Addison assured the court he was not displaying his Bibles. (R. 157:4, R-App. 144.) He asked why he could not display his drawing; the court explained it was not admitted into evidence. (R. 157:5, R-App. 145.) The court explained it would not be admissible "to create these impressions in front of the jury that you are a religious man, and, therefore, are not likely to have committed these offenses." (R. 157:5–6, R-App. 145–46.)

The court told Addison he could testify about who he is but could not have the "demonstratives on the table." (R. 157:6, R-App. 146.)

A few days later, still during the State's case, deputies advised the court that Addison had again put his "Bibles or other religious books" on display at his table. (R. 161:4, R-App. 150.)

Addison explained: "I think my Constitutional Rights are now being jeopardized, because this case is including testimonies about church, testimonies about my faith, testimony about me using church, and testimony about me being a monster and evil." (R. 161:4–5, R-App. 150–51.)

He wanted to use his Bibles to show the jury who he is: "I was going to use all of that material, along with a lot of my study material, for my defense to show that these are the Bibles that I went through and I have been through. This is what I do as far as my—This is the real me." (R. 161:5, R-App. 151.)

"I don't intend to use it during trial, but whenever [the district attorney] is cross-examining [sic] her witnesses, I take my liberty and I just read while she is doing that. The Bibles are for my defense." (R. 161:5, R-App. 151.)

He wanted to show who he "really" is; if the court removed them, he argued, "it is saying that I can't use what I need in my defense." (R. 161:5, R-App .151.)

The State noted Addison put the "Bibles out there very prominently" after the court's prior warning. (R. 161:6, R-App. 152). As it questioned a witness, the State saw Addison pick up a Bible so-labelled, turn his back to the witness and jury, and "flamboyantly" read it so everyone could see. (R. 161:6, R-App. 152.) The State argued Addison appeared to be attempting to introduce "a form of character evidence." (R. 161:6, R-App. 152.)

Addison argued Wis. Stat. § 904.04 allowed evidence of his character; the State argued that exception applied to a "pertinent trait," not to show action in conformity therewith. (R. 161:6–7, R-App. 152–53.) The State argued Addison tried to "suggest to the jury, without having to testify, that he has a particular character." (R. 161:7–8, R-App. 153–54.)

The court concluded Addison attempted to use the Bibles as impermissible evidence. (R. 161:8, R-App. 154). It saw him reading as the State described but did not see the book. (R. 161:8, R-App. 154). Addison interjected: "[n]either could they, because I turned the book away." (R. 161:8, R-App. 154.)

The court ordered the Bibles removed: "This effort on your part to put these religious related demonstratives in front of the jury is completely impermissible, because it is not evidence. They are not allowed to decide this case on anything other than the evidence." (R. 161:8, R-App. 154.)

"Your attempt to put these ideas into their minds in ways that are not in fact evidentiary is improper, because the State can't cross-examine you about it. The State can't really do anything about it. So for that reason, you can't have any demonstratives with you at the table." (R. 161:9, R-App. 155.)

It explained he could tell the jury a "bit" about himself if he testified, but could not under Chapter 904 argue "because I go to church or I read the Bible I didn't do these actions." (R. 161:9–10, R-App. 155–56.)

It also noted that Wis. Stat. § 906.10 prohibits evidence of religious beliefs to show credibility. (R. 161:9–10, R-App. 155–56.)

It was "not saying the fact that [he is] a church going person is completely inadmissible." (R. 161:10, R-App. 156.) It noted the jury already heard evidence of him going to church. (R. 161:10, R-App. 156.) "But you don't get to have demonstratives at your table." (R. 161:10, R-App. 156.)

Addison asked if he could have his Bibles in the courtroom, just not on the table. (R. 161:11, R-App. 157.) The court said no: "At this point I am going to prohibit you from having them in the courtroom. Because you have, in [sic] multiple occasions, engaged in this kind of conduct that I think I pretty clearly made evident to you was not permissible by explicitly removing the religious picture." (R. 161:11, R-App. 157.)

The Court concluded it did not violate Addison's right to freely exercise his religion. (R. 161:11, R-App. 157.) Addison was free to pray silently if he so wished, but the court would not allow conduct designed to be "demonstrated to the jury." (R. 161:11, R-App. 157.)

Postconviction litigation. Addison sought reversal of his convictions on grounds the court interfered with his free exercise of religion when it removed the Bibles from the courtroom. (R. 121:14–16, A-App. 139–41.) The circuit court denied his motion via written order, relying on its reasoning during trial. (R. 128:15, A-App. 125.)

B. Standard of review

Appellate courts review evidentiary rulings under an erroneous exercise of discretion standard. *State v. Walters*, 2004 WI 18, ¶ 13, 269 Wis. 2d 142, 675 N.W.2d 778. A circuit court properly exercises discretion when it examines relevant facts, applies a proper legal standard, uses a demonstrated rational process, and reaches a conclusion a reasonable judge could reach. *Id.* ¶ 14.

Whether a court's evidentiary ruling deprived a defendant of a constitutional right is a question of constitutional fact subject to independent appellate review. *State v. Williams*, 2002 WI 58, ¶ 69, 253 Wis. 2d 99, 644 N.W.2d 919. Whether harmless error applies is legal question reviewed independently. *State v. Nelson*, 2014 WI 70, ¶ 29, 355 Wis. 2d 722, 849 N.W.2d 317.

C. Principles of law

Both the U.S. and Wisconsin Constitutions protect free exercise of religion. U.S. Const. amend. I; Wis. Const. art. I, § 18. *King v. Village of Waunakee*, 185 Wis. 2d 25, 52, 517 N.W.2d 671 (1994).

Freedom of religious belief is an absolute right. Freedom to act on the basis of religious belief, however, may be subject to regulation. *Cantwell v. Connecticut*, 310 U.S. 296, 303–04 (1940). "We have never held that an individual's beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Employment Div. v. Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878–79 (1990); *see also State v. Neumann*, 2013 WI 58, ¶ 125 n.76, 348 Wis. 2d 455, 832 N.W.2d 560.

"It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country." *Illinois v.*

Allen, 397 U.S. 337, 343 (1970). Our circuit courts have broad authority to oversee courtroom decorum and presentation of evidence. *State v. Cannon*, 196 Wis. 534, 221 N.W.2d 603 (1928); *Medved v. Medved*, 27 Wis. 2d 496, 504, 135 N.W.2d 291 (1965) ("[a] trial court has the right to control and conduct its court in an orderly, dignified and proper manner") (citation omitted); *State v. James*, 2005 WI App 188, ¶ 8, 285 Wis. 2d 783, 703 N.W.2d 727 (courts have "discretion to admit or exclude evidence and to control the order and presentation of evidence at trial"); Wis. Stat. § 906.11(1).

There is no constitutional right to present irrelevant evidence. *State v. Robinson*, 146 Wis. 2d 315, 332, 431 N.W.2d 165 (1988).

"Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced." Wis. Stat. § 906.10.

While "[e]vidence of a pertinent trait of the accused's character" may be admissible, character evidence is "not admissible for the purpose of proving that the person acted in conformity therewith." Wis. Stat. § 904.04.

A "strong presumption" exists that harmless-error review applies. *Nelson*, 355 Wis. 2d 722, ¶ 29. Structural errors "affect[t] the framework within which the trial proceeds, and are not simply error[s] in the trial process itself." *Id.* ¶¶ 30–34 (citation omitted.) A defendant's right to testify, for example, is subject to harmless error analysis. *See generally id.*

D. The circuit court did not violate Addison's right to free exercise when it removed his Bibles from the courtroom after he ignored its admonishment to not display them.

The circuit court engaged in a logical analysis guided by two pertinent Wisconsin statutes—Wis. Stats. §§ 906.10 and 904.04—after giving the defendant a warning. It did not err when it determined under those statutes that Addison tried to use his Bibles as improper character evidence.

We know Addison attempted to use the Bibles as character evidence because he told the court just that: he did not intend to use them "during trial" but wanted to show "[t]his is the real me." (R. 161:4–5, R-App. 150–51.)

Addison's free exercise arguments therefore fail. Addison does not challenge the constitutionality of Wis. Stat. § 906.10's prohibition of evidence of religion to enhance credibility. Addison also makes no argument that evidence of his religious nature would have been admissible as a "pertinent trait" or otherwise. *See* Wis. Stats. §§ 904.04(1)(a), 906.10.

Addison asserts the "court did not inquire into the purpose of the Bible Addison brought to court." (Addison's Br. 24.) Incorrect. Before removing them, the court said he could have them, just not on display. (R. 157:4–7; 161:4–5, R-App. 144–46, 150–51.) Addison told the court his purpose: to show "the real me." (*See* R. 161:5, R-App. 151.)

Addison asserts the court "did not explain" how his Bibles interfered with "the compelling interest in conducting an orderly, impartial trial." (Addison's Br. 24.) Incorrect. The court explained Addison could not display them to show that he would not commit the crimes because he is a "religious man." (*See* R. 157:4–6; 161:4–9, R-App. 144–46, 150–56.)

Addison asserts the court "did not consider whether to allow Addison to hold the Bible in his lap, cover the title or

otherwise conceal it from the jury." (Addison's Br. 24.) Incorrect. When the court ordered the Bibles removed, Addison asked if he could have them but not on his table. (*See* R. 161:11, R-App. 157.) The court said no because he disregarded its previous order. (R. 161:11, R-App. 157.)

Without development, Addison cites *Wisconsin v. Yoder* for the principle that "the government must show that it has a compelling interest" to "justify a substantial interference with religious beliefs or practices." (Addison's Br. 24.) Without application, Addison argues the circuit "court's directive was a substantial interference" with his "First Amendment right to the free exercise of his religion." (Addison's Br. 24.) Without explanation, Addison asserts this interference with a "fundamental right" is "structural error." (Addison's Br. 25.)

Addison does not explain how his arguments relate to the validity of his criminal convictions. Addison does not challenge the constitutionality of the statutes the court relied on to rule. (*See* Addison's Br. 24.) *Yoder* applies to claims that a state law violates our rights to free exercise. *See, e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (challenge to Wisconsin's compulsory school attendance law); *State v. Peck*, 143 Wis. 2d 624, 422 N.W.2d 160 (Ct. App. 1988) (challenge to laws criminalizing marijuana use).

For *Yoder* to apply, a preliminary question is whether the statute actually interferes with constitutionally-protected freedom to exercise religious beliefs. *State v. Yoder*, 49 Wis. 2d 430, 434, 182 N.W.2d 539 (1971), *aff'd*, *Wisconsin v. Yoder*, 406 U.S. 205. If so, a court must weigh the burden on free exercise against the importance of the statute's interest. *Id.*

As this Court recognizes, "[c]onstitutional claims are very complicated from an analytic perspective, both to brief and decide. A one or two paragraph statement that raises

the specter of such claims is insufficient to constitute a valid appeal." *Cemetery Servs., Inc. v. Dep't of Regulation & Licensing*, 221 Wis. 2d 817, 831, 586 N.W.2d 191 (Ct. App. 1998). This Court should reject Addison's undeveloped constitutional challenge. *See State v. Petit*, 171 Wis. 2d 627, 646–47, 492 N.W.2d 633 (Ct. App. 1992) (this Court need not address undeveloped arguments).

Even if this Court chooses to work as both "advocate and court," *see Cemetery Servs., Inc*, 221 Wis. 2d at 831, and determines a way to apply his arguments to his convictions, Addison's arguments would still fail.

Addison tried to use the Bibles to show the jury his character, "for his defense." (R. 161:5, R-App. 151.) Addison thus does not establish his displays even served as an *exercise* of his religious beliefs (as opposed to demonstration that he *has* religious beliefs).

The court did not impose a heavy burden. The court (a) attempted to accommodate Addison's wish to have Bibles when it first gave him a warning, and (b) advised him after removing them he could still pray silently at his table. (*See* R. 157:4–6; 161:11, R-App. 144–46, 157.)

Further, the court had a compelling interest in ensuring a fair trial "based on the evidence adduced at trial" by controlling order and presentation of evidence. (*See* Addison's Br. 23); *James*, 285 Wis. 2d 783, ¶ 8; *Medved*, 27 Wis. 2d at 504.

Lastly, though no error occurred, because the court's removal of the Bibles did not affect the "framework" of the proceeding but, rather, a particular effort to improperly introduce evidence, Addison fails to show why harmless error would not apply. *See Nelson*, 355 Wis. 2d 722, ¶¶ 18–23.

The court did not violate Addison's right to free exercise of religion; he is not entitled to a new trial.

CONCLUSION

This Court should affirm the judgments of conviction and order denying postconviction relief.

Dated this 24th day of July, 2018.

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General of Wisconsin

HANNAH S. JURSS
Assistant Attorney General
State Bar #1081221

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 264-9444
(608) 266-9594 (Fax)
jursshs@doj.state.wi.us

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 10,728 words.

Dated this 24th day of July, 2018.

_____
HANNAH S. JURSS
Assistant Attorney General

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I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

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HANNAH S. JURSS
Assistant Attorney General

Supplemental Appendix
State of Wisconsin v. Maries D. Addison
Case Nos. 2018AP55-CR, 2018AP56-CR & 2018AP57-CR

SUPPLEMENTAL APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is a supplemental appendix.

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HANNAH S. JURSS
Assistant Attorney General

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HANNAH S. JURSS
Assistant Attorney General