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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT IV

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Case Nos. 2024AP1923-CR, 2024AP1924-CR  
& 2024AP1925-CR

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STATE OF WISCONSIN,  
Plaintiff-Respondent,  
v.  
MAX E. BELL,  
Defendant-Appellant.

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ON APPEAL FROM A JUDGMENT OF CONVICTION  
ENTERED IN DANE COUNTY CIRCUIT COURT, THE  
HONORABLE JOSANN M. REYNOLDS, PRESIDING

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**RESPONSE BRIEF OF PLAINTIFF-RESPONDENT**

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## ISSUE PRESENTED

The State charged Max E. Bell in three Dane County cases in which he solicited female sex workers and turned consensual encounters with them into violent physical and/or sexual assaults. On the State's motion, the trial court joined the cases for a single trial after determining that the allegations all reflected a common scheme or plan by Bell and that the evidence would be admissible other-acts if the cases were tried separately. The only preserved issue on appeal is the following:

Did the trial court correctly join the cases for trial?

This Court should affirm. Joinder of the cases was proper and correct.

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Neither is warranted. This Court may affirm by applying well-established law to the undisputed facts that the parties' briefs adequately set forth.

## STATEMENT OF THE CASE

Over a 29-month period between February 2018 and July 2020, Max Bell physically and sexually assaulted multiple female sex workers. The State charged Bell in four cases (one per victim) with a variety of criminal counts, including second-degree sexual assault, substantial battery, strangulation and suffocation, solicitation, and felony bail jumping. (R1. 1; R2. 2; R3. 2.)<sup>1</sup>

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<sup>1</sup> This appeal involves three appellate records. In this brief, the State uses "R1" to designate the appellate record in 2024AP1923-CR, "R2" for the record in 2024AP1924-CR, and "R3" for the record in 2024AP1925-CR.

In November 2021, the State filed a motion to join the four cases for a single trial pursuant to Wis. Stat. § 971.12(2) and (4). (R1. 30.) In the alternative, the State asked the circuit court to admit Bell's acts against all of the victims as other-acts evidence under Wis. Stat. § 904.04(2)(b)1. (R1. 30:1.)

After a hearing, the circuit court granted the motion and joined the four cases for trial. (R1. 39; 158:13.) It found that all the crimes involved the same defendant, Bell. (R1. 158:11.) The crimes and allegations were similar and occurred over a relatively condensed period of time. (R1. 158:11–12.) The victims were similarly situated, and the assaults themselves—which began with consensual transactions—reflected a “similar scheme, plan.” (R1. 158:11–13.) The court explained that all of the acts would be admissible other-acts going to motive, opportunity, and intent if each case went to trial individually. (R1. 158:12.) It determined that joinder was not unfairly prejudicial because the crimes would be admissible other-acts in individual cases. (R1. 158:12–13.) It also found that joinder was warranted to preserve judicial and public resources and protect the victims from having to testify multiple times to the same facts. (R1. 158:13.) The court also stated its willingness to include a cautionary jury instruction if Bell wished. (R1. 158:13–14.)

Shortly before trial, the State voluntarily dismissed the fourth case (case no. 2020CF767) and informed the court and parties that it would not be admitting evidence of other-acts pertaining to the victim in that case. (R1. 162:2–3.)

Trial for the three remaining cases proceeded over three days in July 2022. (R1. 149; 164; 165; 167.) The jury found Bell guilty of all counts in all three cases. (R1. 164:229–230.) The court imposed sentences totaling 15 years of initial confinement and 12 years of extended supervision. (R1. 166:37–38.)

Bell now appeals.

## STANDARD OF REVIEW

The initial decision on the joinder of charges for a trial is a question of law that this Court reviews de novo. *State v. Salinas*, 2016 WI 44, ¶ 30, 369 Wis. 2d 9, 879 N.W.2d 609. Nevertheless, “[t]he joinder statute is to be construed broadly in favor of initial joinder.” *State v. Hoffman*, 106 Wis. 2d 185, 208, 316 N.W.2d 143 (Ct. App. 1982). Reviewing courts interpret initial joinder decisions generously to foster “the goals and purposes of the joinder statute,” including economy, efficiency, convenience, and fiscal responsibility. *Salinas*, 369 Wis. 2d 9, ¶ 36. Courts generally favor joinder when the charged offenses involve the same defendant. *Id.*

## ARGUMENT

### **I. The circuit court properly joined the three cases for trial.**

Though Bell lists the circuit court’s joinder decision as the only issue on review (Bell’s Br. 6), he also claims that the circuit court erroneously exercised its discretion in declining to sever the joined charges. (Bell’s Br. 14, 23–25.) The initial joinder decision is the only issue preserved for appeal, and for the reasons below, it was well-supported.

#### **A. The only preserved issue on appeal is whether joinder was proper, not whether the court should have severed the cases.**

Under Wis. Stat. § 971.12(3), a defendant may move to sever charges that have been joined for trial on the grounds that severance is necessary based on prejudice to the defendant. *Salinas*, 369 Wis. 2d 9, ¶ 47. Specifically, “[i]f it appears that a defendant or the state is prejudiced by a joinder of crimes . . . for trial together, the court may order separate trials of counts, grant a severance . . . or provide whatever other relief justice requires.” Wis. Stat. § 971.12(3).

When a defendant fails to file a motion to sever joined charges, prejudice is not at issue on appeal. *Salinas*, 369 Wis. 2d 9, ¶ 49 (“Failing to make a severance motion, regardless of the reason, . . . results in this issue not being ripe for our consideration.”).

In this case, Bell argues that even if the initial joinder was proper, it substantially prejudiced him, so he was entitled to severance. (Bell’s Br. 14, 20.) But Bell never filed a severance motion. Procedurally, this case is just like *Salinas*: the State moved to join the cases, Salinas objected, the trial court granted the State’s joinder motion, and Salinas never “file[d] a motion seeking severance of the joined charges.” *Salinas*, 369 Wis. 2d 9, ¶¶ 11, 13–14, 16. Therefore, just like in *Salinas*, this Court’s opinion should be “limited to [its] holding that initial joinder here was proper.” *See id.* ¶ 49. Bell’s arguments that the trial court erroneously exercised its discretion when it declined to separate joined cases that Bell never asked it to sever are not properly before this Court.

In his brief, Bell suggests that the circuit court also has an inherent responsibility to consider whether joined cases should be severed based on potential prejudice to the defendant; he writes that he was “entitled to severance under Wis. Stat. § 971.12(3).” (Bell’s Br. 14, 20.) This suggestion is incorrect: circuit courts are not obligated to sua sponte consider whether severance is required absent a motion pursuant to Wis. Stat. § 971.12(3). Here, Bell never filed a motion to sever. At most, he objected to the State’s initial joinder motion and argued that joinder would be prejudicial. (R1. 32:3–4.) To the extent that Bell believes that his objection was sufficient to trigger a severance analysis, he is wrong. Because “the initial joinder decision and a decision to sever properly joined charges are distinct considerations that require different standards of review,” an objection to the initial joinder decision is not a prompt for the circuit court to

exercise its discretion on whether the cases should be severed. *Salinas*, 369 Wis. 2d 9, ¶ 30.

Because Bell never asked the circuit court to engage in a severance analysis, the only issue properly before this Court is “whether the initial joinder was proper.” *See Salinas*, 369 Wis. 2d 9, ¶¶ 30, 49. As discussed below, joinder was proper for multiple reasons.

**B. Joinder of multiple offenses involving the same defendant is generally favored.**

Again, though this Court reviews a challenge to the trial court’s joinder decision de novo, “[t]he joinder statute is to be construed broadly in favor of initial joinder.” *Hoffman*, 106 Wis. 2d at 208. Reviewing courts interpret initial joinder decisions generously to foster “the goals and purposes of the joinder statute,” including economy, efficiency, convenience, and fiscal responsibility. *Salinas*, 369 Wis. 2d 9, ¶ 36. Courts generally favor joinder when the charged offenses involve the same defendant. *Id.*

Joinder is governed by Wis. Stat. § 971.12(1), which provides four scenarios under which initial joinder is proper: “(1) when two or more crimes are of the ‘same or similar character’; (2) when two or more crimes are based on the ‘same act or transaction’; (3) when two or more crimes are based on two or more acts or transactions that are ‘connected together’; or (4) when two or more crimes are based on two or more acts or transactions that constitute ‘a common scheme or plan.’” *Salinas*, 369 Wis. 2d 9, ¶ 31 (citing Wis. Stat. § 971.12(1)).

*Francis v. State* provides an example of a situation in which joinder was appropriate under both the “connected together” and “common scheme or plan” provisions. *Francis v. State*, 86 Wis. 2d 554, 560–61, 273 N.W.2d 310 (1979). In *Francis*, the crimes charged (sexual perversion and robbery) involved two incidents in which the defendant exhibited the

same modus operandi (carjacking a woman with the intent to sexually assault her), they were close in time (35 days apart), they occurred within the same two-block area, and they were part of a common scheme or plan that tended to establish the identity of the perpetrator. *Id.* The court further concluded that evidence of each crime would be admissible in separate trials. *Id.* at 561.

**C. Joinder here was proper.**

Here, the three joined cases satisfy the “same or similar character,” the “connected together,” and the “common scheme or plan,” scenarios. This Court may affirm the initial joinder decision based on any one of these three scenarios.

**1. All three cases involved Bell soliciting sex workers, getting them alone, and then violently physically and/or sexually assaulting them.**

In case number 2019CF1525, Bell solicited AMT, a prostitute, on February 14, 2018, in Verona, gave her cash, and then began strangling her. (R1. 1:2.) While still holding her neck and throat, he forced anal sex with her. (R1. 1:3.) AMT told police that while she agreed to have intercourse with Bell, she did not consent to have him strangle her and she told him to stop when he forced intercourse with her. (R1. 1:2–3.) Bell was charged with strangulation and suffocation as a repeater and pandering – solicitation, as a repeater. (R1. 1:1.)

In case number 2020CF2585, while he was out on bail in the case involving AMT and in the fourth, later-dismissed, case, Bell contacted KLE through an adult web site and met her at an address in Madison on July 15, 2020. (R2. 2:2–3.) KLE initially engaged in consensual oral and vaginal intercourse with Bell in his car. (R2. 2:3.) As the encounter

went on, KLE asked to end the intercourse, but Bell used his body weight against her, pulled her arms behind her back, pushed her head between her legs, and forced anal sex with her. (R2. 2:3.) KLE stated that she made clear in her ad that she was not willing to have anal sex, that she screamed, and that she told Bell to stop. (R2. 2:3.) Bell was charged with second-degree sexual assault as a repeater and two counts of felony bail jumping, based on his bond status in the case involving AMT and in the fourth, later-dismissed, case. (R2. 2:1–2.)

In case number 2020CF2958, also while he was out on bail in the case involving AMT and in the fourth, later-dismissed, case, Bell contacted ARM through an ad on a website called “Skip the Games.” (R3. 2:4.) After they agreed on payment, ARM met Bell (who identified himself as “Justin”) at an address in Madison on September 17, 2019. (R3. 2:2, 4.) After the two briefly introduced themselves outside the residence, Bell directed ARM to walk to the back of the home to access “his room.” (R3. 2:3.) Bell then attacked ARM from behind, knocking her down and punching her multiple times in the back of her head, causing significant injuries. (R3. 2:3.) ARM “screamed as loud as she could” during the attack and “this appeared to scare ‘Justin’ off.” (R3. 2:3.) In October 2020, ARM contacted police after seeing a news story about Bell’s assaults of other women and recognizing Bell as her attacker. (R3. 2:4–5.) Bell was charged with substantial battery as a repeater, and felony bail jumping as a repeater; the latter was based on Bell’s bond status in the case involving AMT. (R3. 2:1–2.)

## **2. The crimes were of “the same or similar character.”**

“For separate crimes to be ‘of the same or similar character,’ the crimes must be ‘the same type of offenses occurring over a relatively short period of time and the

evidence as to each must overlap.” *State v. Watkins*, 2021 WI App 37, ¶ 24, 398 Wis. 2d 558, 961 N.W.2d 884 (citing *State v. Linton*, 2010 WI App 129, ¶ 14, 329 Wis. 2d 687, 791 N.W.2d 222). Whether a time period is “relatively short” depends on the similarity between the offenses and the overlap in evidence; the more similarity and overlap between the offenses, the longer the time period can be to remain sufficiently short. *See State v. Hamm*, 146 Wis. 2d 130, 140, 430 N.W.2d 584 (Ct. App. 1988) (holding that a 15- to 18-month period was “relatively short” because the home-invasion sexual-assault crimes were similar and had substantial overlap).

Here, the 29-month period of Bell’s crimes was relatively short because his crimes all bore significant similarities and overlapped in substantial ways. All involved Bell contacting a female sex worker and arranging to pay for sexual contact or intercourse. All involved an initially consensual encounter that turned violent and nonconsensual. Two crimes involved forced anal sex while the other involved a significant physical assault. Importantly, all involved Bell targeting victims who were engaging in illegal activity themselves; therefore, they were seemingly less likely to report assaults. Based on that fact and the nature of sexual assaults, a two-and-a-half-year period of time is not significantly long.

Moreover, the crimes overlap not only based on Bell’s similar modus operandi, but also because Bell was on bond for the first case when he committed the second two assaults, resulting in felony bail jumping charges. Finally, AMT, the victim in the third case identified Bell as her attacker after seeing his mug shot publicized following his arrest in the second case involving KLE. Accordingly, evidence probative of her identification of Bell as her assailant overlapped between her and KLE’s case.

### 3. The crimes were also “connected together.”

In considering whether crimes are “connected together,” this Court considers multiple factors,

including but not limited to: (1) are the charges closely related; (2) are there common factors of substantial importance; (3) did one charge arise out of the investigation of the other; (4) are the crimes close in time or close in location, or do the crimes involve the same victims; (5) are the crimes similar in manner, scheme or plan; (6) was one crime committed to prevent punishment for another; and (7) would joinder serve the goals and purposes of § 971.12.

*Watkins*, 398 Wis. 2d 558, ¶ 23 (quoting *Salinas*, 369 Wis. 2d 9, ¶ 43).

Several of those factors support joinder under this scenario. The second factor is present because there were common facts of substantial importance (i.e., the similarities in Bell’s modus operandi between the crimes and the similarities between the sex-worker victims). Under the third factor, the charges involving ARM arose after ARM identified Bell when learning of the investigation of his crimes against KLE, and the felony bail jumping counts in the cases involving KLE and ARM arose from the case involving AMT. Under the fifth factor, the crimes were similar in manner, scheme, or plan: all involved Bell arranging to meet with a sex worker, getting her alone, and becoming physically violent (i.e., beating ARM and strangling AMT) or sexually violent (i.e., forcing nonconsensual anal sex with KLE and AMT). And finally, under the seventh factor, the trial court found that joinder served the goals and purposes of the statute, because the facts were admissible in separate trials, which would hamper judicial economy, harm the victims and witnesses, and waste resources. (R1. 158:13.)

Bell argues that the cases are not “connected together” because they were unlike first-degree murders that occurred

three months apart in *Hoffman*, 106 Wis. 2d at 209, or like the murder-for-hire and witness-intimidation schemes in *Watkins*, 398 Wis. 2d 558. (Bell’s Br. 17.) *Hoffman* and *Watkins* are not the only cases or guideposts for applying the connected-together factors. To the contrary, in *Francis*, the connected-together factors were satisfied based on two incidents involving different victims in which the defendant exhibited the same modus operandi (carjacking a woman with the intent to sexually assault her) and thus a common scheme or plan that tended to establish Francis’s identity as the perpetrator. *Francis*, 86 Wis. 2d at 560–61.

**4. The crimes were also properly joined under the “common plan or scheme” scenario.**

Taken together, the crimes most clearly satisfy the “common scheme or plan” scenario making joinder proper. Between February 2018 and July 2020, Bell three times solicited women to pay them for sex. In all three instances, Bell exhibited the same modus operandi: he exploited a consensual transaction and turned it into a violent, nonconsensual one, by forcing physical and sexual assaults. All of the acts occurred in the same general geographic area (Madison or Verona), they occurred within a 29-month period, and Bell was the same perpetrator and targeted similarly situated victims. Notably, in the latter two cases, the felony bail jumping counts were based on Bell’s bond status for assaulting AMT. Accordingly, his arrest and custody in case number 2019CF1525 would have been admissible to prove felony bail jumping in the trials of the latter two cases had Bell not stipulated to being on bail for felony charges.

**D. Bell’s arguments are unpersuasive.**

Bell argues that the dissimilarity in the charges and the 29-month time period fails to satisfy the connected-together and common-plan-or-scheme standards. (Bell’s Br. 17–18.) As

argued above, however, that Bell's similar modus operandi resulted in distinct charges does not create meaningful dissimilarity.

Further, simply because some other cases involved shorter periods of time does not mean that a 29-month period is not "relatively short." What constitutes a relatively short period of time is case-dependent; in cases involving multiple similar sexual assaults of distinct victims, periods of 18 months and two years were "relatively short" under the circumstances. *See, e.g., Salinas*, 369 Wis. 2d 9, ¶ 38 (holding that sexual assaults spanning two-and-a-half years followed by four months of calls supporting witness intimidation charges occurred close in time); *State v. Locke*, 177 Wis. 2d 590, 596, 502 N.W.2d 891 (Ct. App. 1993) (two years between distinct sexual assaults); *Hamm*, 146 Wis. 2d at 140 (18 months between distinct burglaries and sexual assaults).<sup>2</sup> As the trial court correctly observed here, given "this much similarity in the actual allegations," the 29-month period between Bell's first and his last assault was not "a long period of time for crimes of this magnitude." (R1. 158:12.)

Bell also asserts that these cases involved different victims and charges and that there was no overlap between the cases. (Bell's Br. 18–19.) Thus, he concludes, this case is unlike two handpicked cases (*Hoffman* and *Watkins*) where the joinder involved inherently related initial charges and conspiracies to suppress witness testimony. (Bell's Br. 17–18.) He discounts the value in explaining to the jury how ARM identified Bell as her assailant and argues that the

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<sup>2</sup> *See also State v. Saunders*, No. 2013AP1229-CR, 2013 WL 5911458, ¶ 26 (Wis. Ct. App. Nov. 5, 2013) (unpublished) (R-App. 17–18) (holding that two-and-a-half-year period was "relatively short" where joined cases involved "very similar" allegations of defendant's sexual assaults of gynecological patients).

underlying facts of the other counts were not necessary to prove the bail jumping charges. (Bell's Br. 18–19.)

Bell's focus on *Hoffman* and *Watkins* is misleading. Those cases involved the joining of charges of an initial crime with illegal efforts to avoid punishment for that crime. But that is just one of many circumstances in which Wisconsin appellate courts have upheld joinder. Tellingly, Bell ignores the many cases in which Wisconsin courts upheld joinder of distinct crimes that involved a similar *modus operandi* by one defendant against different victims. *See, e.g., Locke*, 177 Wis. 2d at 596; *Hamm*, 146 Wis. 2d at 140; *Francis*, 86 Wis. 2d at 560; *State v. Kramer*, 45 Wis. 2d 20, 36, 171 N.W.2d 919 (1969); *see also State v. Saunders*, No. 2013AP1229-CR, 2013 WL 5911458, ¶ 24 (Wis. Ct. App. Nov. 5, 2013) (unpublished); (R-App. 17).

Further, Bell disingenuously dismisses the overlap between how ARM identified him and the crimes underlying the felony bail jumping charges. Bell's primary defense to ARM's allegations was that the State failed to prove his identity as her attacker. (R1. 164:200–04.) Further, the bail jumping charges required the jury to find that Bell was on bond on felony charges when he committed two of the crimes. Even though the parties ultimately stipulated to his felony bond status, the State nevertheless maintained its burden to prove those facts. And the facts that Bell was on bond for similar crimes when he committed new ones reflects a clear overlap bearing on his identity as the assailant in all three cases.

In sum, the circuit court correctly joined the cases here under any of the three statutory scenarios. Bell fails to identify any precedent or advance arguments necessitating reversal.

**II. Even if this Court considers severance, Bell cannot show substantial prejudice.**

Even though Bell never moved the circuit court to sever the cases and has, as a result, failed to preserve the question for appeal, this Court may alternatively hold that any exercise of discretion by the circuit court in declining to sever the cases is well-supported in the record.

**A. There is no basis for this Court to grant postconviction severance of the cases.**

A circuit court's decision on severance is discretionary. *See Salinas*, 369 Wis. 2d 9, ¶ 30 (citing *Locke*, 177 Wis. 2d at 596–97). To succeed on a severance request, a defendant must show more than some prejudice resulting from the joinder. *State v. Linton*, 2010 WI App 129, ¶ 21, 329 Wis. 2d 687, 791 N.W.2d 222 (citation omitted). That “more than some” standard is required because “[a]ny joinder of offenses is apt to involve some element of prejudice to the defendant.” *Id.* Hence, a defendant must show “a higher degree of prejudice, or certainty of prejudice” to warrant severance of charges or other relief. *Id.* Further, “when evidence of the counts sought to be severed is admissible [as other-acts evidence] in separate trials, ‘the risk of prejudice arising due to a joinder of offenses is generally not significant.’” *State v. Hall*, 103 Wis. 2d 125, 141, 307 N.W.2d 289 (1981) (citation omitted).

Other-acts evidence is admissible if it is offered for a permissible purpose under Wis. Stat. § 904.04(2), if it is relevant, and if its probative value is not substantially outweighed “by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.” *State v. Sullivan*, 216 Wis. 2d 768, 772, 576 N.W.2d 30 (1998). Additionally, the case involving KLE alleged sexual assault; courts have “greater latitude” in admitting other acts in sexual assault cases, meaning that

admission in those cases is facilitated and favored. Wis. Stat. § 904.04(3)(b)1.; *State v. Dorsey*, 2018 WI 10, ¶ 33, 379 Wis. 2d 386, 906 N.W.2d 158.

Here, the trial court soundly determined that the crimes would be admissible other-acts if the cases were tried separately. As for the first *Sullivan* prong, the other crimes would support multiple permissible purposes, including motive and intent, identity, absence of mistake or accident, and plan and mode of operation. As for the second prong, the other acts are relevant to those purposes and, as discussed above, share multiple similarities showing Bell's motive, plan, intent, identity, and absence of mistake in targeting these victims and turning a consensual encounter into a violent, nonconsensual attack.

Finally, as for the third prong, in each case, Bell was being tried for a violent attack on a female sex worker. None of the facts from the other crimes would unfairly prejudice Bell any more than the facts each jury would be considering in an individual case. In addition, the trial court provided a curative instruction that minimized potential prejudice from the three cases being tried together. *Dorsey*, 379 Wis. 2d 386, ¶ 55 (noting that jurors presumably follow instructions and that cautionary instructions “can go ‘far to cure any adverse effect’” from other-acts evidence). Here, the trial court told the jury that the trial involved three different cases, and that it could not use a determination of guilt in one case to find guilt in another case. (R1. 164:151–52.) Rather, the court instructed the jurors to limit their consideration of the facts from the other offenses to issues of motive, opportunity, intent, and plan when it was determining the elements of any one offense. (R1. 164:151–53.)

**B. Alternatively, any error in the initial joinder decision was harmless.**

If a circuit court errs in granting a motion for joinder, the decision is subject to a harmless error analysis. *State v. Davis*, 2006 WI App 23, ¶ 21, 289 Wis. 2d 398, 710 N.W.2d 514. “Such a policy is acceptable and even desirable when harmlessness is demonstrated by overwhelming evidence of guilt or when the court is convinced for other reasons that ‘the error did not influence the jury or had but very slight effect.’” *Id.* (quoting *State v. Leach*, 124 Wis. 2d 648, 671–72, 370 N.W.2d 240 (1985)). To show that an error is harmless, the State must show that it is “clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.” *State v. Nelson*, 2014 WI 70, ¶ 44, 355 Wis. 2d 722, 849 N.W.2d 317 (citation omitted).

Bell was convicted on strong evidence across all three cases. As for the strangulation and solicitation charges involving AMT, AMT testified that she met Bell after he responded to her advertisement on Back Page. (R1. 167:115–17.) She said that after arriving to the address Bell provided, he initially seemed to be handing her money, but then quickly moved behind her and choked her with his arm across her neck. (R1. 167:121–22.) She testified to her struggle to breathe and stay conscious and described to a nurse at the time the “crushing” strength of Bell’s grip on her neck. (R1. 167:122–26, 176.)

After the assault, she had bruising inside her ear canal, which an expert testified was difficult to inflict and required significant pressure to cause. (R1. 167:177–78.) The expert also explained that a chokehold was unlikely to result in visible external injuries, so it was not unusual that AMT did not have such injuries from the strangulation. (R1. 167:190.) Police located Bell through the phone number he used set up the meeting with AMT. (R1. 167:129, 139–41.) Bell told police that he contacted AMT through what he called a “casual

encounter” website and that they had nonviolent, consensual sex. (R1. 165:14–17.)

As for the second-degree sexual assault count against KLE, forensic testing showed a hair and DNA belonging to Bell on KLE’s underwear, evidence in her advertisement that she would not consent to anal intercourse, and testimony from a witness who knew KLE to normally be reserved and stoic observed KLE’s highly distraught reaction after the encounter with Bell. (R1. 149:55–56.) KLE also had bleeding from her anus, abrasions, and bruises consistent with her description of how Bell assaulted her. (R1. 165:105–06.)

Finally, as for the physical assault of ARM, ARM testified that she was a sex worker who met Bell after he responded to her ad. (R1. 164:48.) She said that after she arrived and was alone with Bell, he hit her in the head from behind with a hard object, and continued to strike her while she was on the ground. (R1. 164:58–60.) ARM had significant injuries supported by medical records, including a scar where part of her ear had to be reattached to her scalp due to Bell’s physical violence. (R1. 164:76.) She described feeling sick to her stomach when she recognized Bell’s mugshot in a news article. (R1. 164:77.)

Additionally, given Bell’s similar scheme and modus operandi in all of the cases, there is no reasonable basis to argue that the trial court would not have admitted the facts of the other crimes as other acts in separate trials. Hence, the jury would have heard about Bell’s crimes against each of the victims in each trial as it did here. To that end, the court and parties took steps to minimize the potential harm to Bell. As noted above, the jury was instructed to consider each charge individually, to not conclude that Bell was guilty of one charge simply because he was guilty of others, and to limit how it considered the evidence of his other crimes when determining his guilt on any one count. (R1. 164:151–53.) There is no basis to think that the jury disregarded that instruction or that it

did not serve to cure any unfair harm in the jury hearing of Bell's other crimes. *Dorsey*, 379 Wis. 2d 386, ¶ 55.

**C. Bell's arguments to the contrary are wrong.**

Bell argues that the evidence supporting the charges was “far from overwhelming.” (Bell's Br. 20–21.) He focuses on the absence of visible injuries to AMT and KLE and his defense that ARM misidentified him. (Bell's Br. 21–22.) He writes that joining the cases invited the jury to treat the other facts as propensity evidence and heightened the risk of his convictions on all of the counts. (Bell's Br. 22.)

Bell does not acknowledge the curative jury instruction provided here, the State's evidence explaining why AMT and KLE did not have more significant visible injuries, and the evidence supporting that ARM correctly identified Bell. He also does not acknowledge that any joinder or admission of other-acts is likely to result in some prejudice to a defendant; he does not explain why, under these circumstances, he was substantially or unfairly prejudiced.

Bell finally challenges as an erroneous exercise of discretion the circuit court's ruling that all of the evidence of Bell's pattern of crimes against sex workers would be admissible in each case. (Bell's Br. 23–26.) He focuses on what he deems an unexplained ruling by the trial court. But the trial court's reasoning was clear: all the crimes were allegedly committed by the same defendant, who engaged in similar conduct (meeting for consensual paid sex and then turning violent), and targeting “very similarly situated” sex-workers. (R1. 158:12–13.) In the cases involving AMT and KLE, the acts were relevant to and probative of motive, opportunity, plan, and intent based on their similarity. Additionally, as for ARM, the other crimes were relevant to and probative of those purposes as well as identity. (R1. 158:12–13.)

Even assuming that the trial court's other-acts decision is unclear (and it's not), this Court may affirm if the facts of record would support the circuit court's decision. *See State v. Hunt*, 2003 WI 81, ¶ 34, 263 Wis. 2d 1, 666 N.W.2d 771. Beyond critiquing the trial court's explanation, Bell offers no argument why his other crimes would not be admissible other-acts in any of the three cases. In contrast, as argued above, all of Bell's crimes showing his modus operandi and scheme of targeting sex workers and turning a consensual transaction into violent, nonconsensual one show marked similarities and were relevant to and probative of multiple permissible purposes, including motive, intent, identity, plan, and modus operandi; and their admission and use did not unfairly prejudice Bell.

Accordingly, the record supports the circuit court's discretionary ruling to the extent that it constituted a denial of a request for severance. Bell is not entitled to relief.

## CONCLUSION

This Court should affirm the judgment of conviction.

Dated this 5th day of May 2025.

Respectfully submitted,

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### **FORM AND LENGTH CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 5,224 words.

Dated this 5th day of May 2025.

Electronically signed by:

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### **CERTIFICATE OF EFILE/SERVICE**

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 5th day of May 2025.

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