

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 21, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP2085-CR

Cir. Ct. No. 2003CF46

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LLOYD R. RIDDLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Juneau County: GUY D. REYNOLDS, Judge. *Affirmed.*

Before Vergeront, Lundsten and Bridge, JJ.

¶1 PER CURIAM. Lloyd Riddle appeals a judgment convicting him of first-degree intentional homicide and hiding a corpse as a party to the crime. He also appeals an order denying his postconviction motion in which he alleged ineffective assistance of trial counsel. Riddle argues that: (1) the State presented

insufficient evidence to support the homicide conviction; (2) the circuit court should have suppressed guns and the contents of a computer seized pursuant to a search warrant because the officers violated the “knock-and-announce” rule and failed to return the warrant; and (3) the court should have conducted a voir dire of the jury after apparent juror misconduct, and Riddle’s trial counsel was ineffective for failing to request voir dire. We reject these arguments and affirm the judgment and order.

¶2 The State presented sufficient evidence to establish that Riddle participated in the shooting death of Mark Meyer. Riddle admitted to police that he plotted with a drug dealer, Jay Dolphin, to kill Meyer in a rural area where Riddle hunted and target practiced. He explained his motive for wanting Meyer dead, and admitted to being present when Meyer was shot. He also admitted helping to bury Meyer’s body. In addition to his own statements, the State presented evidence that cartridges found near the murder scene were fired from guns found in Riddle’s house and car. The State also introduced documents retrieved from Riddle’s computer describing his frustration with Meyer and stating “I knew what he deserved, and I was the one to play judge and executioner.”

¶3 The defense contends that Ralph Zielinski shot Meyer and, despite Riddle’s discussions about killing Meyer, he did not know the shooting would take place. He contends that the cartridges could have been left there from previous hunting or target practicing and he assisted in burying Meyer’s body in order to get away from the scene. The jury reasonably rejected that defense based on the evidence and reasonable inferences from the evidence. *See State v. Poellinger*, 153 Wis. 2d 493, 507-509, 451 N.W.2d 752 (1990). Riddle concealed the crime for five years despite various police contacts, and pretended to help police find the “missing person.” He did not accuse Zielinski of being the shooter until after

police executed a search warrant at his home and found the guns. We cannot conclude that the State's evidence was so lacking in probative value that no jury acting reasonably could find guilt beyond a reasonable doubt. *Id.*

¶4 The circuit court properly denied Riddle's motion to suppress the guns and the evidence retrieved from his computer. Riddle's argument that the police violated the "knock and announce" rule is not factually supported. The circuit court chose to believe the testimony of Detective Garvin Anderson that the officers knocked and announced their presence and Riddle's wife did not hear the knock because of a television and the noise from children. The circuit court is the arbiter of the witnesses' credibility, and this court must accept its finding of fact unless it is clearly erroneous. *State v. Owens*, 148 Wis. 2d 922, 929-30, 436 N.W.2d 869 (1989). In addition, suppression is not an appropriate remedy for a violation of the knock and announce rule for a search conducted when the defendant was not home, his safety was not endangered and there was no damage to his property or intrusion on his privacy. *See Hudson v. Michigan*, 126 S. Ct. 2159, 2165-66 (2006). The same rule applies under the Wisconsin Constitution. *State v. Brady*, 2007 WI App 33, ¶8 n.3, 298 Wis. 2d 782, 729 N.W.2d 792.

¶5 Riddle also argues that the evidence should have been suppressed because the officers failed to return the warrant as required by WIS. STAT. § 968.17 (2005-06).¹ That argument also fails for two reasons. First, the circuit court found credible the officer who testified that she did return the warrant to the clerk of courts, despite the lack of documentary evidence. Second, failure to

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

return the warrant would not affect Riddle's substantial rights and therefore is not grounds for suppressing evidence. *See* WIS. STAT. § 968.22.

¶6 During the trial, a bailiff overheard an unidentified juror say "Riddle. Two guns," followed by, "I told you there would be more cartridges." The court alerted counsel to the conversation and suggested admonishing the jury that it should not discuss any of the evidence prior to its deliberations. Neither party objected to the court's proposed response, thereby waiving any right to directly challenge its decision on appeal. *See State v. Marshall*, 113 Wis. 2d 643, 653, 335 N.W.2d 612 (1983).

¶7 Citing *United States v. Resko*, 3 F.3d 684 (3d Cir. 1993), Riddle argues that the circuit court should have sua sponte conducted a voir dire to determine the extent of juror misconduct, and his trial counsel was ineffective for not requesting a voir dire. While the jurors comments may reflect an inappropriate discussion about the case, they do not rise to the level of "premature deliberations." The circuit court has wide discretion in determining how to treat apparent juror misconduct. *Id.* at 690. The court reasonably exercised its discretion when it informed counsel of the potential juror misconduct and admonished the jury to refrain from discussing the case until their deliberations began. The brief comment overheard by the bailiff does not suggest juror bias or extraneous influences on any juror. *See United States v. Blume*, 967 F.2d 45, 47-48 (2d Cir. 1992). Questioning the jurors on this subject might taint the jury and give undue attention to the shell casings. Under these circumstances, the circuit court had no independent obligation to voir dire the jury.

¶8 Riddle has not established ineffective assistance of his trial counsel for failing to request individual voir dire of the jury. To establish ineffective

assistance, Riddle must show deficient performance and prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). This court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance, and Riddle must overcome a presumption that counsel's challenged action might be considered sound trial strategy. *Id.* at 689. To establish prejudice, Riddle must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is one that undermines our confidence in the outcome. *Id.* at 694. At the postconviction hearing, Riddle's trial counsel testified that he did not request voir dire because the juror's statements were consistent with the defense theory that Riddle had used the crime scene for target practice. Further inquiry might have led to grounds for dismissing a juror who was favorable to the defense. Counsel also felt the trial was going well and requesting a mistrial would have been harmful to Riddle. Counsel's decision constitutes a reasonable trial strategy and this court's confidence in the outcome is not undermined by his failure to request voir dire.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

