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DISTRICT I

February 10, 2026

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Electronic Notice

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

Hans P. Koesser
Electronic Notice

Abigail Potts
Electronic Notice

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

2024AP1806-CR State of Wisconsin v. Ivan A. Santiago (L.C. # 2017CF5145)

Before White, C.J., Colón, P.J., and Donald, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Ivan A. Santiago appeals the judgment convicting him of eleven felonies stemming from a series of home invasions, shootings, and robberies. He also appeals the order denying his postconviction motion.[1] Based upon our review of the briefs and record, we conclude at

[1] The Honorable Janet Protasiewicz presided over Santiago's trial and entered the judgment of conviction. The Honorable Jeffrey A. Wagner entered the order denying Santiago's postconviction motion. We refer to them as the circuit court and the postconviction court, respectively.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[2] We affirm.

Background

As relevant for purposes of this appeal, Santiago was arrested in the upper unit of a duplex. At the time of his arrest, Santiago said that he did not live in the duplex.

Officers conducted warrantless searches of both the upper and lower units. In a bedroom of the lower unit, police found 9mm cartridges, ammunition, and a "Scream" mask fitting the description of a mask used in one of the home invasions. In the laundry room, which was connected to the bedroom, police found a 9mm handgun with an extended magazine, which was later determined to be connected to the crimes, and a duffle bag containing three vacuum-sealed bags of marijuana. In the detached garage, police found rifles that were linked to three of the criminal charges against Santiago.

Prior to trial, Santiago sought to suppress evidence obtained during the search. He requested an evidentiary hearing and argued that the owner of the lower unit, Andrea Rios, did not consent to the search.

A suppression hearing was held on the first day of trial. Detective Timothy Keller testified at the hearing and described the events that resulted in the officers taking Santiago into custody and searching the upper and lower units of the duplex.

[2] All references to the Wisconsin Statutes are to the 2023-24 version.

Detective Keller testified that a resident of the upper unit gave officers permission to search the unit. Officers found Santiago in a bedroom there. At the time that officers found Santiago in the upper unit, no attempt had yet been made to access the lower unit. According to Detective Keller, after Santiago was handcuffed, the police learned that Santiago had a possible connection to the lower unit. Detective Keller testified that when he asked Santiago whether there were any guns in the house, Santiago "answered that by saying he did not live there and that we could search anything we wanted because we wouldn't find anything." Detective Keller then testified that Santiago informed Keller that he lived at a different address.

Detective Keller's testimony continued:

> I then informed him that we wanted to ask everyone in the house for permission to search, and he, again, stated go ahead; I don't live here.
>
> [Prosecutor:]: And just so we're clear, when you're talking about permission to search the house, you're referring to the upper and lower units; is that correct?
>
> [Answer]: Correct. Because we had already found out that he was associated with the lower.
>
> [Prosecutor]: And the defendant tells you two things, A, I don't live in the lower or the upper, and, two, or, B, go ahead and search?
>
> [Answer]: Correct.

Santiago also testified at the hearing. He confirmed that he told Detective Keller that he did not live in the house and that he told Keller, "you all can search the house[.]" Santiago confirmed that he did not live in either the upper or the lower unit. Santiago said that he had spent the night in the lower unit a few times but stated that the bedroom in the lower unit was not his. Santiago denied ever putting anything in the laundry room in the lower unit, but acknowledged that he used it frequently, describing it as an "open space[.]"

The circuit court denied the suppression motion, concluding that Santiago gave express consent to search the entire building. In arriving at this conclusion, the court explained:

> Detective Keller indicated that he made it clear they wanted to search the entire building. But then the defendant goes a step further and says he doesn't live there, go ahead and search; and he actually gives another address….
>
> So I do find that while the standing issue is interesting, I do find that he was—clearly indicated he didn't live there, that he stayed there from time to time.
>
> I don't know that it's been established that he actually had standing. But what I do know has been established is that he clearly gave consent.

The case proceeded to trial, and the jury convicted Santiago of eleven felonies. Santiago sought postconviction relief.

In his postconviction motion, Santiago argued that if trial counsel had called Rios as a witness at the suppression hearing, there is a reasonable probability that the result of the suppression hearing would have been different. Santiago claimed that Rios would have disputed the State's version of the events leading to the search of the lower unit. If some of the key evidentiary items had been suppressed, Santiago argued that there is a reasonable probability that the result of his trial would have been different.

The postconviction court denied the motion without a hearing. In its written decision, the court explained that Santiago "did not offer any subjective expectation of privacy in the bedroom, laundry room, or detached garage" in order to establish standing. The court further concluded that Santiago failed to demonstrate that he was prejudiced by trial counsel's failure to call Rios as a witness at the suppression hearing. This appeal follows.

Analysis

The sole issue on appeal is whether Santiago was entitled to an evidentiary hearing on his postconviction motion. To prevail on a claim of ineffective assistance of counsel, a defendant must prove both that counsel's performance was deficient and that the deficiency prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).

To prove deficient performance, the defendant must show that counsel's actions or omissions "fell below an objective standard of reasonableness." ***Id.*** at 687-88. To prove prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.*** at 694. If a defendant fails to make a sufficient showing on one prong of the ***Strickland*** test, a reviewing court need not address the other. ***Id.*** at 697.

A defendant who alleges ineffective assistance of counsel must seek to preserve counsel's testimony in a postconviction hearing. ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). The defendant, however, is not automatically entitled to such a hearing. ***State v. Allen***, 2004 WI 106, ¶14, 274 Wis. 2d 568, 682 N.W.2d 433. Rather, the circuit court is required to hold an evidentiary hearing only if the defendant has alleged, within the four corners of the postconviction motion, sufficient material facts that, if true, would entitle the defendant to relief. ***Id.***, ¶¶14, 23. Whether a postconviction motion alleges sufficient material facts to require a hearing is a question of law that we review de novo. ***Id.***, ¶9.

If a postconviction motion "does not raise facts sufficient to entitle the defendant to relief, or if it presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a

hearing." ***State v. Ruffin***, 2022 WI 34, ¶28, 401 Wis. 2d 619, 974 N.W.2d 432. "In other words, if the record conclusively demonstrates that the defendant is not entitled to relief, then either option—holding a hearing or not—is within the circuit court's discretion. We review discretionary decisions for an erroneous exercise of discretion." ***Id.***

With these principles in mind, we turn to Santiago's claim that his trial counsel was ineffective for failing to call Rios as a witness at the suppression hearing. This claim fails from the get-go given that Santiago's own testimony at the suppression hearing conclusively establishes that he is not entitled to relief on the underlying Fourth Amendment claim. As a result, we agree with the State that Santiago has no basis on which to construct an ineffective assistance of counsel claim.

The Fourth Amendment guarantees, in relevant part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. CONST. amend. IV. However, the person challenging a search or seizure must have standing to assert such a claim. ***State v. Fox***, 2008 WI App 136, ¶10, 314 Wis. 2d 84, 758 N.W.2d 790. "A person has standing under the Fourth Amendment when he or she 'has a legitimate expectation of privacy in the invaded place.'" ***Id.*** (citation omitted).

It was Santiago's burden to show, by a preponderance of the evidence, that he had a reasonable expectation of privacy. *See* ***State v. Tentoni***, 2015 WI App 77, ¶7, 365 Wis. 2d 211, 871 N.W.2d 285. "The privacy interest is both subjective and objective: a defendant must show he or she subjectively expected privacy in the area or object, and the expectation is one that society recognizes as reasonable." ***State v. Gasper***, 2024 WI App 72, ¶10, 414 Wis. 2d 532,

16 N.W.3d 279. Whether Santiago has standing is a question of law that we review de novo. *See* ***Fox***, 314 Wis. 2d 84, ¶8.

Here, the record conclusively establishes that Santiago did not have the requisite subjective expectation of privacy. It was not his residence, he was not an overnight guest of the lower unit when he was arrested, and he disclaimed any subjective expectation of privacy. As such, we need not analyze the objective prong of the standing analysis.

Rios's affidavit, provided in support of Santiago's postconviction motion, offers facts about how the search of the lower unit unfolded. Such testimony would not have cured Santiago's lack of standing. The failure to present testimony from an irrelevant witness does not amount to ineffective assistance. In light of this resolution, we need not address the alternative grounds offered by the State to support affirmance. *See* ***State ex rel. Oitzinger v. City of Marinette***, 2025 WI App 19, ¶76, 415 Wis. 2d 635, 19 N.W.3d 663 (stating that we "decide cases on the narrowest possible grounds" (citation omitted)).

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals