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DISTRICT I

July 21, 2026

To:

Hon. Paul R. Van Grunsven
Circuit Court Judge
Electronic Notice

Kathleen E. Wood
Electronic Notice

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

Akeem A. Travis 601525
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P.O. Box 19033
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You are hereby notified that the Court has entered the following opinion and order:

2023AP2277-CR

State of Wisconsin v. Akeem A. Travis (L.C. # 2018CF229)

Before Donald, C.J., Colón, P.J., and Geenen, 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).

Akeem A. Travis, pro se, appeals from a judgment of conviction, an order denying his postconviction motion, and an order denying his motion for reconsideration. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21 (2023-24).¹ The judgment and orders are summarily affirmed.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Milwaukee police responded to a shots-fired complaint on January 14, 2018. Upon arrival, officers noticed a vehicle driving near the location of the complaint and began to follow it. The vehicle accelerated to speeds between 65 and 100 miles per hour, running multiple stop signs and red lights before the driver lost control and struck a light pole. The occupants were ordered out of the vehicle. Travis was identified as a passenger, and he was observed talking on a black flip phone manufactured by Alcatel as he exited the vehicle. When ordered to put the phone down, he threw it onto the front passenger seat.

Officers recovered 10.7 grams of cocaine from the vehicle, along with a digital scale and six cell phones, including the Alcatel. Travis was personally carrying \$1,490 in currency, most of which was \$20 bills. Travis was charged with possession with intent to deliver between five and fifteen grams of cocaine as a party to a crime. A jury convicted Travis as charged and he was sentenced to seven years of initial confinement and five years of extended supervision.

After discharging postconviction counsel in 2020, Travis filed a pro se postconviction motion pursuant to WIS. STAT. RULE 809.30. In its response, the State indicated it had discerned five claims for relief:

(1) trial counsel was ineffective due to not challenging a warrantless search of the cellphone, not conducting an investigation, and not appearing at the final pre-trial; (2) turning over the cellphone evidence on the morning of trial was a **Brady** violation[;] (3) there was a confrontation violation due to officers calling someone on his phone[;] (4) the cellphone evidence turned over on the day of trial is newly discovered evidence and he deserves a new trial and lastly (5) the defendant asks to be made eligible for programming.

The circuit court, agreeing with the State's synopsis of the motion, concluded Travis's claims "lack[ed] merit" and denied the motion without a hearing. The court also stated that "[t]o the extent the defendant's motion or reply brief allude to other claims that have not been otherwise

addressed in this decision or in the State’s response, such claims are conclusory, undeveloped, and insufficient to warrant a hearing or other relief.” Travis moved for reconsideration, which the circuit court also denied. Travis appeals. Additional facts will be discussed herein as necessary.

“A hearing on a postconviction motion is required only when the movant states sufficient material facts that, if true, would entitle the defendant to relief.” *State v. Allen*, 2004 WI 106, ¶14, 274 Wis. 2d 568, 682 N.W.2d 433. We review only the allegations within the four corners of the motion. *Id.*, ¶27. If the motion does not raise sufficient facts, if the motion presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, then the decision whether to grant a hearing is committed to the circuit court’s discretion. *Id.*, ¶9.

To demonstrate ineffective assistance of counsel, “the defendant must prove (1) that trial counsel’s performance was deficient; and (2) that this deficiency prejudiced the defendant.” *State v. Dillard*, 2014 WI 123, ¶85, 358 Wis. 2d 543, 859 N.W.2d 44. An attorney is deficient if they “made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment.” *Allen*, 274 Wis. 2d 568, ¶26 (citation modified). Prejudice is “defined as a reasonable probability that, but for counsel’s error, the result of the proceeding would have been different.” *State v. Guerard*, 2004 WI 85, ¶43, 273 Wis. 2d 250, 682 N.W.2d 12.

Travis first alleges that trial counsel was ineffective because she “failed to conduct any meaningful discovery and thus was totally unaware that certain damaging evidence might have been the appropriate subject for a suppression motion.” Specifically, he contends that trial

counsel should have moved to suppress evidence obtained from what Travis believes to be warrantless searches of the cell phones.²

The record reflects that a search warrant was issued for all of the phones on January 23, 2018, and a warrant specifically for the Alcatel phone was issued on January 24, 2018. “[A]n attorney’s failure to pursue a meritless motion does not constitute deficient performance.” *State v. Cummings*, 199 Wis. 2d 721, 747 n.10, 546 N.W.2d 406 (1996). Travis also does not establish any prejudice, because he does not establish how a motion to suppress would have invalidated the search warrants or otherwise changed the results of his trial.³

A Cellebrite extraction report for one of the phones⁴ was not presented to defense counsel until the morning of trial. Travis alleged this constituted a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), under which a defendant has a due process right to any favorable evidence that is “material either to guilt or to punishment” that is in the State’s possession, *id.* at 87. “A *Brady*

² Travis made two other ineffective assistance claims, neither of which is sufficiently pled. First, Travis complained that trial counsel was ineffective “for not showing for [the] final pretrial.” However, the record reflects that counsel appeared by telephone for the final pretrial, and Travis does not identify how this appearance was deficient or prejudicial.

Second, Travis argued that trial counsel was ineffective for not filing a motion in limine regarding DNA evidence obtained from two bags of drugs and for not entering a stipulation with the State that his DNA was “not found,” and he argues that the State’s implication that the DNA was his was “highly prejudicial.” The DNA evidence in question was simply insufficient to develop a profile that could be compared to any of the standard profiles, including Travis’s, for inclusion or exclusion, and he has not identified any part of the record where the State represented the DNA evidence was matched to Travis.

³ In his appellate brief, Travis says the warrants were improperly obtained after a “confirmatory” search. This argument is undeveloped and appears to have been raised for the first time on appeal, so we do not consider it further. See *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988); see also *State v. Van Camp*, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997).

⁴ “A Cellebrite search enables the user to access text messages, contacts, call logs, media, and application data on a cell phone and to select which types of data to download.” *United States v. Cano*, 934 F.3d 1002, 1008-09 (9th Cir. 2019). It is unclear which phone this particular report was from.

violation has three components: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must be material.” ***State v. Wayerski***, 2019 WI 11, ¶35, 385 Wis. 2d 344, 922 N.W.2d 468. However, Travis has not alleged what within the Cellebrite reports was exculpatory or otherwise relevant to the question of his guilt or innocence. Accordingly, Travis’s motion is insufficiently pled.

Travis also asserted that the last-minute report was newly discovered evidence that warranted a new trial. “In order to set aside a judgment of conviction based on newly-discovered evidence, the newly-discovered evidence must be sufficient to establish that a defendant’s conviction was a manifest injustice.” ***State v. Plude***, 2008 WI 58, ¶32, 310 Wis. 2d 28, 750 N.W.2d 42 (citation modified). For newly discovered evidence to constitute a manifest injustice, the defendant must first prove, by clear and convincing evidence, that: “(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.” ***Id.*** (citation omitted).

Travis’s motion fails to sufficiently plead the case for newly discovered evidence. First, it is clear from the record that the Cellebrite report was discovered before trial, not after conviction. Moreover, defense counsel told the court that although the report itself was new, she did not think it was “significant” because she had already received photos of more than 200 messages and the Cellebrite report identified, at most, two or three more messages the State was not planning to use.

One Cellebrite report, for a Samsung phone, shows thirty phone calls on the phone after Travis's arrest, including during the time it was supposedly off and in police inventory. Twenty-four of the thirty calls had a recorded length of 00:00.00. Of the remaining six, all were less than one minute long and only two were outgoing. There is no evidence about those six calls, beyond the basic data in the report. Travis contends there was a confrontation clause violation "by [police] not disclosing information they obtained during phone calls."

The confrontation clause guarantees criminal defendants the right to confront the witnesses against them. *State v. Hale*, 2005 WI 7, ¶43, 277 Wis. 2d 593, 691 N.W.2d 637. The general rule is that the confrontation clause is violated when a witness's testimonial hearsay statements are admitted into evidence against a defendant without the witness appearing for cross-examination at trial. See *State v. Rockette*, 2006 WI App 103, ¶20, 294 Wis. 2d 611, 718 N.W.2d 269. Travis failed to sufficiently plead a confrontation clause violation because he does not identify testimonial hearsay statements that were admitted from those calls.

Finally, Travis asked that he be made eligible for the challenge incarceration and substance abuse programs. However, Travis had previously asked the circuit court in June 2021 to amend the judgment of conviction to make him eligible for those programs, and his request was denied. Because Travis litigated this issue once before, the circuit court did not err in denying a hearing on it now: "[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding[.]" *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and orders 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