

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 13, 2026

Samuel A. Christensen
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 Nos. 2024AP2383-CR
2024AP2384-CR**

STATE OF WISCONSIN

**Cir. Ct. Nos. 2020CF4517
2021CF2578**

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PARIS LEANDRE MAYES,

DEFENDANT-APPELLANT.

APPEALS from judgments and an order of the circuit court for Milwaukee County: MARK A. SANDERS and KORI L. ASHLEY, Judges.
Affirmed.

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

Per curiam opinions 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).

¶1 PER CURIAM. Paris Leandre Mayes appeals from two judgments convicting him of two counts of first-degree recklessly endangering safety while armed, one count of possession of a firearm by a felon, and one count of felony witness intimidation, and from an order denying postconviction relief.¹ On appeal, Mayes contends that he was deprived of effective assistance of counsel because his trial counsel: (1) failed to present booking photos of Mayes that did not match the description of the offender given by two witnesses; and (2) failed to request a jury instruction defining the term “maliciously” pursuant to WIS. STAT. § 940.41(1r) (2023-24).² We conclude that the postconviction court properly denied Mayes’s claims without an evidentiary hearing.

BACKGROUND

¶2 This consolidated appeal arises out of two trial court cases: Milwaukee County Circuit Court Case Nos. 2020CF4517 and 2021CF2578. In 2020CF4517, Mayes was charged with: (1) first-degree recklessly endangering safety while armed with the serious violent crime repeater; (2) first-degree recklessly endangering safety while armed with the repeat firearm crimes mandatory minimum; and (3) possession of a firearm by a felon with the repeat firearm crimes mandatory minimum. All of the charges also included the criminal habitual repeater.

¹ The Honorable Mark A. Sanders presided over the jury trial. The Honorable Kori L. Ashley presided over the postconviction proceedings. We refer to Judge Sanders as the trial court and Judge Ashley as the postconviction court.

² We note that the offenses in this case took place in 2020 and 2021. However, because the relevant statutory language has not changed, we cite to the 2023-2024 version of the statutes.

¶3 According to the criminal complaint, on December 10, 2020, Mayes fired multiple shots at a residence. At the time of the shots, June, June’s daughter, and five of her grandchildren, including Jessie, were inside of the residence.³ Jessie identified Mayes as the shooter from a photo array.

¶4 Mayes originally proceeded to trial on April 20, 2021. After jury selection and opening statements, June and Jessie did not appear. The prosecutor advised the court that Jessie reported being afraid to come to court because she had received a phone call telling her not to appear. The State determined that the phone number of the caller in question was linked to Mayes’s jail calls. The State moved for a mistrial to investigate and pursue a witness intimidation charge. Defense counsel did not object to the State’s request for a mistrial and the trial court granted the motion.

¶5 Subsequently, in 2021CF2578, Mayes was charged with one count of conspiracy to commit felony witness intimidation with the criminal habitual repeater. The complaint alleged that Mayes, via jail phone calls, conspired with two brothers, Maurice and Kevin Rittman, to persuade Jessie not to appear in court.

¶6 The two cases were joined and Mayes again proceeded to trial. At trial, the State’s witnesses included June, Jessie, several officers involved in the investigation, and Mayes’s probation agent who identified his voice on the jail phone calls. The State played the recordings of the jail calls and provided a

³ To protect the victims’ identities and for ease of reading, we adopt the pseudonyms used in the postconviction court’s decision and the State’s appellate brief. WIS. STAT. § 809.86(4).

transcript. The State also played an officer's body camera video from the day of the shooting, which showed a person displaying a Facebook photo of the alleged shooter while the officer spoke to June. Additionally, the video showed the display of the photo array to Jessie. Mayes opted not to testify and stipulated that he had a prior felony conviction.

¶7 During deliberations, the jury requested the transcript or audio of the jail phone calls, the Facebook photo, the photos used in the photo array, the video showing the display of the photo array to Jessie, the photo of Mayes signed by Jessie from the identification of Mayes in the photo array, and a police report providing the description that Jessie gave to the police. The court played a portion of the jail calls, played the video showing the photo array, and provided the requested exhibits. The trial court, however, denied the jury's request to view the police report because it was not in evidence and instructed the jury to use their collective memory regarding any references to the police reports.

¶8 The jury found Mayes guilty of all counts. He was sentenced to a total of ten years of initial confinement and ten years of extended supervision.

¶9 Mayes filed a postconviction motion alleging that his trial counsel was ineffective for: (1) failing to present several booking photos of Mayes which did not match the description of the shooter given by Jessie and June; and (2) failing to request a jury instruction defining the term "maliciously" from the witness intimidation statute.⁴

⁴ The motion also requested eligibility for the substance abuse treatment program under WIS. STAT. § 302.05. Mayes does not raise this claim on appeal and thus we do not discuss it further. *A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998).

¶10 After additional briefing, the postconviction court denied the motion. This appeal follows. Additional relevant facts are discussed below.

DISCUSSION

¶11 On appeal, Mayes renews his claims that his trial counsel was ineffective for failing to present the booking photos and for failing to request a jury instruction defining the term maliciously. We conclude that the postconviction court properly denied Mayes’s motion without an evidentiary hearing.

¶12 To establish ineffective assistance of counsel, a defendant must prove both that counsel’s performance was deficient and that the defendant was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In regards to prejudice, a 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. A reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *Id.* If the defendant fails to adequately show one prong of the test, we need not address the second. *Id.* at 697.

¶13 When reviewing a postconviction decision denying an ineffective assistance of counsel claim without a hearing, we examine two issues de novo. *State v. Jackson*, 2023 WI 3, ¶8, 405 Wis. 2d 458, 983 N.W.2d 608. First, we determine whether the postconviction motion on its face alleges “sufficient material and non-conclusory facts that, if true, would entitle the defendant to relief.” *Id.* Second, we determine whether “the record conclusively demonstrates that the defendant is not entitled to relief.” *Id.* (citations omitted). If the motion alleges sufficient and non-conclusory facts that would entitle the defendant to

relief and the record does not conclusively establish otherwise, then a hearing must be held. ***Id.*** However, “[i]f the 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 [postconviction] 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.

I. Booking Photos

¶14 At trial, there was no dispute that someone fired shots into the residence. Rather, the key dispute was the identity of the shooter.

¶15 June testified at trial that she told the police that the shooter had dreadlocks. June was shown a photo array but did not identify anyone.

¶16 Jessie, who was seventeen years old at the time of the trial, testified that she told police that the shooter had blonde hair, a sandy brown beard, and had a mask covering his nose that was pulled up exposing his chin. An officer testified that Jessie also said that the shooter had “twisted hair.”⁵ Jessie identified Mayes in a photo array and in court.⁶ Jessie stated that she was “a hundred percent” sure that the person in the photo array and in court was the shooter and if she “could be a thousand percent, [she] would say a thousand percent.”

⁵ We note that Jessie in her testimony denied telling police that the shooter had “twisted hair.”

⁶ According to the State in postconviction proceedings, the photo of Mayes included in the photo array was taken in 2015.

¶17 Mayes contends that trial counsel should have presented the booking photos from four of his previous arrests, which took place on April 14, 2018, September 6, 2018, June 20, 2019, and November 22, 2019, and his arrest in this case, which was six days after the shooting.⁷ Mayes asserts that in all of these photos, he had “very close-cropped” hair. Mayes argues that trial counsel’s failure to present the booking photos prejudiced him because there was no physical evidence linking him to the crime, June’s testimony was “inconsistent and incredible,” Jessie viewed the suspect from the second floor and part of his face was covered by a mask, and Jessie’s testimony was suspect because “it was clear that she had been steered towards [Mayes] by friends and family members.” Mayes emphasizes that during the trial, the following exchange occurred between the prosecutor and Jessie:

Prosecutor: Just real quick, on the date of the incident, one of the things you did say was you knew this person to be Hard Head Red?

Jessie: Yes.

Prosecutor: So you didn’t know him, but you kind of knew of him. Is that fair to say?

Jessie: Yes, I just knew the name. I never had saw him or knew how he looked or anything until the day of.

Prosecutor: But if you look at—when you looked at the photos and based on your vision, how sure are you that the individual that you’ve identified both in the photo array and here in court is the individual that was there firing shots the day of the incident?

Jessie: If I could be a thousand percent, I would say a thousand percent. But I’m a hundred percent that’s him.

⁷ We note that the shooting took place on December 10, 2020, Mayes was arrested on December 16, 2020, and the booking photo was taken on December 17, 2020.

¶18 The postconviction court rejected Mayes’s arguments on two grounds. First, the court observed that “having close-cut hair six days after the shooting does not prove [Mayes’s] hairstyle on the day of the shooting” and it “is not beyond the realm of possibility” that Mayes had altered his hair from “twisted” to “close-cropped” after the shooting. The court noted that “[h]ad the witnesses observed someone with a shaved head shooting at their house, and six days later [Mayes] was observed with shoulder-length hair, *that* would likely be of great interest to a jury.”

¶19 Second, the postconviction court observed that there was a serious risk to Mayes if trial counsel introduced the past booking photos reflecting that Mayes had been arrested for multiple crimes. While the jury was aware that Mayes had a prior felony due to his felon in possession charge and that Mayes was on probation for another offense, “presenting evidence of four booking record photos taken before the shooting in this case shows more than a previous felony and a probationary status—it shows a long history of criminal conduct.” Thus, the court stated “where the probative value of [Mayes’s] hairstyle in the years before the shooting and nearly a week after the shooting is relatively low, and the prejudice of telling the jury that [he] had been booked into jail repeatedly is relatively high,” Mayes failed to establish prejudice.

¶20 We agree with the postconviction court that Mayes is not entitled to a hearing. The record conclusively demonstrates that Mayes is not entitled to relief. **Ruffin**, 401 Wis. 2d 619, ¶28; **State v. Spencer**, 2022 WI 56, ¶50, 403 Wis. 2d 86, 976 N.W.2d 383. Even if the booking photos at issue had been introduced, there is not a reasonable probability that the result of the proceeding would have been different. **Strickland**, 466 U.S. at 694.

¶21 June’s and Jessie’s eyewitness accounts of the shooting and Jessie’s identification of Mayes as the shooter was unrefuted. As the State observes, it is reasonable that although Jessie had not seen Mayes before, she was able to connect the dots between knowing of Mayes through her family members and his nickname and the man she saw shooting at her grandmother’s house. Jessie was able to identify Mayes both in the photo array and in the courtroom, testifying that she was “a hundred percent” sure that he was the man she saw shooting at her grandmother’s house.

¶22 The booking photos from before the shooting and after the shooting provide no evidence of Mayes’s hairstyle on the date of the shooting. As the postconviction court observed, altering one’s appearance from a “twisted hairstyle” to a “close-cropped haircut” a couple of days later is “not beyond the realm of possibility.” Further, as the postconviction court observed, introducing multiple booking photos from prior to the shooting would have allowed the jury to learn that Mayes had been previously arrested many times and emphasized his criminal history. Accordingly, we conclude that the postconviction court properly denied Mayes’s motion without an evidentiary hearing.

II. Jury Instruction

¶23 At trial, Jessie testified that she had met with the prosecutor in preparation for the original trial date. When she returned home that evening, she received information that she and June had been followed to and from court. The following day, Jessie said she received a phone call from her cousin, Maurice. She was not aware of any relationship between Mayes and Maurice or between Mayes and Maurice’s brother, Kevin. Jessie said Maurice was “practically begging” her not to go to court and told her she was “not a snitch.” Jessie told a

victim witness specialist that she was not comfortable appearing for court. Subsequently, Jessie met with an investigator who played recordings of several jail calls and she identified the speakers as Maurice and Kevin.

¶24 Gilbert Carrasco, an investigator for the Milwaukee County District Attorney’s Office, testified that Jessie told him about the call she received from Maurice. Carrasco verified that Jessie received a call from and made a call to Maurice from her phone. Carrasco found six relevant jail calls, two of which were made with Mayes’s pin number. Five of the calls were to Kevin and one was to Maurice. The calls were played for the jury, and the jurors were provided with transcripts. Mayes’s probation agent, Lela Porter, reviewed clips of the recorded jail phone calls and identified Mayes as one of the speakers.

¶25 The witness intimidation statute, WIS. STAT. § 940.42, provides that “whoever knowingly and maliciously prevents or dissuades, or who attempts to so prevent or dissuade any witness from attending or giving testimony at any trial, proceeding or inquiry authorized by law, is guilty of a Class A misdemeanor.” WISCONSIN STAT. § 940.43(7) provides that witness intimidation is a felony where the intimidation “is committed by a person who is charged with a felony in connection with a trial, proceeding, or inquiry for that felony.”

¶26 At trial, the jury was instructed in relevant part that the witness intimidation offense has three elements: (1) Jessie was a witness; (2) Mayes “attempted to dissuade [Jessie] from attending or giving testimony at a proceeding authorized by law”; and (3) Mayes acted knowingly and maliciously, which required that Mayes knew Jessie was a witness and that Mayes acted with the purpose to prevent Jessie from testifying. *See* WIS JI—CRIMINAL 1292 (2020). During closing argument, Mayes’s trial counsel asserted that if the jury believed

that Mayes was on the jail calls, his conduct was not malicious because he was “scared,” “want[ed] information,” and was “trying to figure out what is going on and he is reaching out to someone who knows the family.”

¶27 Mayes contends that his trial counsel performed deficiently by not requesting a modification or a separate instruction to add the definition of the term “maliciously.” WISCONSIN STAT. § 940.41(1r) defines maliciously as “an intent to vex, annoy or injure in any way another person or to thwart or interfere in any manner with the orderly administration of justice.”

¶28 Mayes argues that if the jury had been provided with a definition for the term maliciously, there was a reasonable probability that a jury would not have convicted Mayes of witness intimidation. Mayes concedes that the evidence supporting that he sought to prevent Jessie from testifying was “strong” and the “only possible defense was that he did not do so maliciously.” Mayes asserts that “there is a reasonable probability that the jury would have had a reasonable doubt about whether [Mayes] was the shooter if they had heard evidence that he did not match the witness’ descriptions.” Mayes then goes on to state that if the jury did not find him guilty of being the shooter, “there is a reasonable probability that the jury would have acquitted on the witness intimidation charge.” According to Mayes “it is questionable whether a person who seeks to prevent a witness from appearing to give false testimony can be said to have the ‘intent ... to thwart or interfere in any manner with the orderly administration of justice.’” WIS. STAT. § 940.41(1r).

¶29 The postconviction court found that Mayes’s argument was “too conjectural” and Mayes could not meet his burden to establish ineffective assistance of counsel. The postconviction court observed that Mayes’s argument

was “contingent upon the jury hearing that [Mayes] (allegedly) did not match the witnesses’ descriptions, in which case, *if* the jury was not convinced he was the shooter, *then* there is a reasonable probability they would not have convicted him of witness intimidation if instructed properly.” The court found that Mayes had failed to establish ineffective assistance with respect to the booking photos and also noted trial counsel argued to the jury that if it was Mayes on the calls, he “was acting from a place of innocence and panic, rather than malice.”

¶30 We agree with the postconviction court that Mayes is not entitled to an evidentiary hearing on this claim. Mayes’s prejudice argument as pled is contingent upon his booking photos claim, which fails. As stated above, had the booking photos been introduced, there is not a reasonable probability that the result of the proceeding would have been different based on the record. ***Strickland***, 466 U.S. at 694. Thus, Mayes has failed to sufficiently establish prejudice with respect to his jury instruction claim. Accordingly, we conclude the postconviction court properly denied Mayes’s motion without a hearing.

¶31 Therefore, for the reasons stated above, we affirm.

By the Court.—Judgments and order affirmed.

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

