

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 20, 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 No. 2024AP1751-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2021CF274

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEREK DAVID GOPLIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Langlade County: JOHN B. RHODE, Judge. *Affirmed.*

Before Stark, P.J., Hruz, and Gill, JJ.

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. Derek David Goplin appeals from a judgment of conviction, entered following a jury verdict, for first-degree intentional homicide

while armed with a dangerous weapon. Goplin also appeals from an order denying his postconviction motion for a new trial based on his claim that his trial counsel provided constitutionally ineffective assistance. In particular, Goplin argues that his counsel should have offered certain evidence that would have justified or mitigated the homicide, given Goplin's state of mind at the time of the offense. We reject Goplin's argument and affirm.

BACKGROUND

¶2 On November 1, 2021, law enforcement found 63-year-old Susan Reese dead in her Antigo home, having suffered multiple stab wounds. Reese is Goplin's mother. Video from a neighbor's security camera showed Reese with her then five-year-old grandson and Goplin's son, Kent,¹ outside of her home hours before it later captured Goplin and Kent leaving the residence. Kent later told a law enforcement officer that his grandmother tried to kill his dad and that "Dad ... made a very big line on [Grandma] and some blood came[] out of Grandma." The State charged Goplin with multiple offenses related to Reese's death, and a few days later, law enforcement located and arrested him in southeastern Wisconsin.

¶3 The case proceeded to a six-day jury trial, during which several witnesses testified. Goplin's brother testified that Reese was Kent's guardian, and Kent testified that he was living with Reese prior to her death and that he was present when she died. Goplin's brother also testified that Goplin was living in the Milwaukee area at the time. The defense's theory was that Goplin acted in

¹ In the interest of protecting his privacy, we refer to Reese's minor grandson using a pseudonym. As permitted by WIS. STAT. RULE 809.86(3) and (4) (2023-24), we use Reese's actual name.

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

self-defense and in defense of Kent. In particular, the defense argued that Goplin was concerned for Kent's safety on the day of Reese's death, as Kent was present, Reese directed profane and threatening language at Kent, and Reese went after Kent and Goplin with a knife.

¶4 At trial, the defense presented—and the circuit court admitted—substantial evidence regarding Kent's unfavorable thoughts regarding Reese and her negative behavior toward him. This included Kent's statements to a hotel employee and a law enforcement officer on the day after the incident,² Kent's trial testimony, and his November 2021 forensic interview. Regarding the "day after" statements, Kent told the hotel employee that "my grandmother was mean to me and my dad and she was hurting my dad, so we had to leave and we came here." The law enforcement officer testified that Kent told him, among other things, that "his grandma tried to kill his dad." In Kent's recorded statement to the officer, Kent was heard saying that "Dad pulled a knife out of Grandma's hand" and that Reese called Kent bad names "because she don't care about me."

¶5 Additionally, Kent's trial testimony and his forensic interview—the latter of which was both played for the jury and a transcript received into evidence—were replete with evidence in support of Goplin's self-defense claim. This evidence included Kent's statements that Reese originally had a knife in her hand and tried to kill Goplin, after which Goplin wrested the knife from her; that Kent thought Reese was going to kill Goplin; that Reese told Kent during the encounter, "I'm going to kill you"; and that Kent "do[es]n't trust Grandma, and I don't care about

² A hotel employee testified that on November 1, 2021, she found Kent wandering around a Waukesha-area hotel. Another hotel employee testified that a person had booked a room at the hotel using a personalized email address with Goplin's name, with check-in on October 31 and checkout on November 1.

her, and I don't love her.” However, Kent also said a number of times that he was not sure what actually happened leading up to Reese dying, as he was mostly hiding in his room at that time.

¶6 Given the foregoing, Goplin contended he was acting in both self-defense and the defense of Kent at the time he fatally stabbed Reese. In conjunction with this theory, Goplin sought and received jury instructions on the lesser-included offenses of second-degree intentional homicide, first-degree reckless homicide, and second-degree reckless homicide. The circuit court also instructed the jury on self-defense and defense of others. Conversely, the State argued, among other things, that whatever led up to Goplin's physical confrontation with Reese, the number, duration and severity of the stab wounds showed Goplin's intent to actually kill Reese, far exceeding what was necessary to protect himself or Kent from her.

¶7 Relevant to this appeal, Goplin moved to admit 13 audio clips extracted from a 12-hour-long audio recording that Kent made on a tablet. The tablet recorded interactions between Goplin, Reese and Kent.³ The 13 clips included instances in which Reese used a lot of vulgar language and a very harsh tone directed at Kent, told him many times to “shut up,” and told him to “lay down or I'll knock you down” and stated, “I'm putting gloves on you.”

¶8 In addition, on the eve of trial, Goplin filed a copy of a handwritten note that law enforcement officers found in a vehicle seized during the investigation.

³ Goplin's counsel also submitted a 160-page transcript of the recordings, which begins and ends with a conversation between Kent and Goplin.

In the undated, three-page note, signed “Derek,” Goplin⁴ complained about how “Reeca,” who was Kent’s mother, had neglected “our kids” and placed them in danger through drug activity. Goplin also asserted that Reese abused Kent physically and verbally, belittled him, called him names, and yelled at him. Goplin claimed that there was a tablet that contained a recording which showed Reese threatening Kent, and he wrote that he “had to make sure she couldn’t hurt him anymore.” Goplin further wrote that he wanted his brother to take care of Kent, expressed his love for his children, and said that he was “sorry [he] can’t be there for them anymore.” Addressing his brother, Goplin stated, “I know you won’t understand or forgive me for what I did.”

¶9 Because Goplin referenced the recording in the note found in the vehicle he was driving shortly after the killing and before his arrest, Goplin asserted that he knew about the recording before Reese’s death, that it “had bearing on his state[] of mind,” and, citing *McMorris v. State*, 58 Wis. 2d 144, 205 N.W.2d 559 (1973), that it was “directly relevant to a defense of self-defense or defense of others.” He also contended that the evidence on the recording was inconsistent with the evidence he believed the State would introduce about “a loving and healthy relationship between [Kent] and [Reese].” The State objected to the recording’s admission on several grounds, including that it did not satisfy the requirements for admissibility under *McMorris* because it did “not capture any instance of violence,”

⁴ During the trial, Goplin’s counsel represented that the note would have been written by Goplin on November 2 or 3, 2021, a few days after Reese’s death. According to Goplin’s own counsel, the “note was found under circumstances that were a little bit odd.” Shortly before trial, Goplin’s counsel requested that a police investigator look under the floor mats of the impounded and previously searched vehicle that law enforcement had seized during the investigation. The investigator then found the three-page handwritten note under the driver’s floor mat.

just threats. The State also noted that it had no intent to introduce evidence about Reese’s character or the quality of her relationship with Kent in its case-in-chief.

¶10 The circuit court addressed the admissibility of the recording and the note on several occasions during trial, as the matter was raised by counsel for both sides. The court, however, never definitively ruled on the admissibility of this evidence, variously noting that: (1) it might be relevant to Goplin’s state of mind at the time he stabbed Reese; (2) admissibility might depend on Goplin testifying at trial, although there could be other ways it would be admitted; and (3) the court would reconsider the issue if and when the defense asked during the trial.

¶11 Neither the note nor the recording containing the 13 audio clips was admitted at trial. Goplin did not testify. The jury ultimately found him guilty of first-degree intentional homicide.

¶12 Goplin subsequently filed a postconviction motion for a new trial, leading to a *Machner*⁵ hearing, at which one of Goplin’s defense counsel provided most of the testimony. Counsel explained that the reason he and co-counsel did not try to introduce the note at trial had to do, in part, with the timing of the discovery of the note and, in part, with the inability to authenticate and admit it. Counsel went on to explain the evidentiary means he and his co-counsel considered for having the note and recordings admitted, but testified that he doubted they would have been successful in that regard.

¶13 Goplin’s counsel agreed that he had described the recordings to postconviction counsel as “pretty powerful, as more than mere grandparent discipline.” But counsel also questioned the net effect on the jury of playing the

⁵ See *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

recordings and having the note read, given that it “could be written off as just mere discipline—a grandmother disciplining a child—or whether it crossed the line.” He went on to testify, “I think some of the language within the audio clip that involves, frankly, violent language, and more importantly, the tone and the shift in tone from the speaker—the alleged victim in this case—made it very impactful, I believe.” Finally, counsel stated his opinion that there was a reasonable probability that the outcome of the trial might have been different had the recordings been admitted.

¶14 Defense co-counsel also briefly testified at the *Machner* hearing, including about her opinion on the likely impact of not playing the recordings. Specifically, she testified that, “I am a mother,” “the way that [Kent’s] grandmother spoke to him in those audio clips was just terrible, and I think any parent on that jury would have really felt the harshness and the awful things she said to him, and there would have been a different outcome.”

¶15 In a written order, the circuit court denied the postconviction motion, concluding that there was neither deficient performance nor any prejudice on defense counsel’s part by failing to admit these pieces of evidence.⁶ As to deficiency, the court concluded that, admissibility issues aside, defense counsel reasonably chose not to offer those items because they could have allowed the State to offer substantial other evidence regarding Reese’s character for caring for Kent.

¶16 As to prejudice, the circuit court concluded:

It would be speculative (not reasonably probable) that the outcome would have been different if the note or clips were admitted because that would have led to counteracting sympathetic evidence about the victim being admitted, thus

⁶ In its written decision, the circuit court made 24 findings of fact, none of which Goplin appears to challenge on appeal.

harming the defense. The [S]tate also argues that it is speculative that the audio clips could have even been admitted as **McMorris** (propensity of violence) evidence because, as defense counsel admitted, the audio contained harsh words only and did not establish any actual violence. Likewise, the “suicide note” (which the [S]tate argues does not discuss suicide at all) does not mention any violent actions by the victim from which Goplin would have needed to protect himself or his son at the time he stabbed his mother to death. The [S]tate argues the note could just as easily be viewed as an admission of wrongdoing by Goplin when he knew he was going to be taken into custody.

¶17 Goplin now appeals. Additional facts will be provided below as necessary.

DISCUSSION

¶18 On appeal, Goplin renews his claim that his trial counsel provided constitutionally ineffective assistance by failing to offer the recordings and the note, which he contends justified or mitigated the homicide, because they showed he was acting in defense of himself and of Kent. A criminal defendant has a constitutional right to the effective assistance of counsel. **State v. Breitzman**, 2017 WI 100, ¶37, 378 Wis. 2d 431, 904 N.W.2d 93. “To demonstrate that counsel’s assistance was ineffective, the defendant must establish that counsel’s performance was deficient and that the deficient performance was prejudicial.” *Id.* “If the defendant fails to satisfy either prong, we need not consider the other.” *Id.*

¶19 “To establish that counsel’s performance was deficient, the defendant must show that it fell below ‘an objective standard of reasonableness.’” *Id.*, ¶38 (citation omitted). “To establish that deficient performance was prejudicial, the 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. A reasonable probability is a probability sufficient to undermine confidence in the

outcome.” *Id.*, ¶39 (citation omitted). “[A] defendant need not prove the outcome would ‘more likely than not’ be different in order to establish prejudice in ineffective assistance cases.” *State v. Sholar*, 2018 WI 53, ¶44, 381 Wis. 2d 560, 912 N.W.2d 89 (citation omitted).

¶20 “Whether a defendant was denied effective assistance of counsel is a mixed question of law and fact.” *Breitzman*, 378 Wis. 2d 431, ¶37. “The factual circumstances of the case and trial counsel’s conduct and strategy are findings of fact, which will not be overturned unless clearly erroneous; whether counsel’s conduct constitutes ineffective assistance is a question of law, which we review de novo.” *Id.* We may affirm the circuit court’s denial of Goplin’s ineffective assistance of counsel claim on different grounds than those relied on by the court. *See State v. Earl*, 2009 WI App 99, ¶18 n.8, 320 Wis. 2d 639, 770 N.W.2d 755. “[W]hen we affirm on other grounds, we need not discuss our disagreement with the [circuit] court’s chosen grounds of reliance.” *Id.*

¶21 We assume, without deciding, that Goplin’s trial counsel performed deficiently by failing to seek admission of the recordings and the note. In doing so, we also assume, again without deciding, that the evidence would have been admissible under *McMorris* or one of the other means Goplin’s counsel considered during the trial.

¶22 With these assumptions in mind, we conclude that the State’s case against Goplin was strong relative to the unoffered evidence, and there is not a reasonable probability that the jury would have acquitted Goplin or found him guilty of a lesser-included charge had it heard the recording of Reese’s comments to Kent and read Goplin’s note. *See Sholar*, 381 Wis. 2d 560, ¶46; *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

¶23 There are multiple problems with Goplin’s attempt to meet his burden to show prejudice within his ineffective assistance of counsel claim. First, Goplin’s appellate argument for prejudice, as opposed to deficient performance, is undeveloped. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (noting that this court need not address undeveloped arguments).

¶24 Second, and relatedly, his argument on prejudice is largely based on his defense counsel both testifying at the *Machner* hearing, in hindsight and in their opinion, that the recordings were very impactful and that there was a reasonable probability of a different outcome if they had been admitted. But the existence of prejudice under *Strickland* is a question of law for courts to determine, on which expert witness testimony—which here would include the testimony of Goplin’s own trial counsel—is inadmissible and thus carries no weight.⁷ In its brief, the State cited and argued *State v. Pico*, 2018 WI 66, ¶¶42, 45, 382 Wis. 2d 273, 914 N.W.2d 95, in support of the foregoing propositions, to which Goplin failed to respond. Accordingly, we deem the matter conceded. *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979).

¶25 Third, and most importantly, the testimony from the *Machner* hearing showed the limited potential efficacy of the recordings and the note, especially given all the other evidence that was presented, by both the State and Goplin himself. Goplin did not dispute that he killed Reese by stabbing her numerous times. Rather, he contended that he was not guilty of any crime—or at least only of a lesser offense

⁷ We also note that Goplin overstates what his counsel said during the *Machner* hearing relative to his prejudice claim. As explained below, counsel were not unwavering in the potential tradeoffs resulting from the admission of the recordings and the note.

than first-degree intentional homicide—because he was privileged to use such force to defend Kent and himself from Reese.

¶26 Goplin relied extensively on Kent’s trial testimony, statements Kent made to the first police officer to make contact with him after Reese’s death, and Kent’s forensic interview to support his primary argument. Namely, Kent described a situation in which Reese was armed with a knife, she threatened to kill Kent and Goplin, and Reese cut skin off Goplin with the knife, all such that Goplin needed to disarm Reese with the intent to protect himself and Kent. Kent also spoke about having an unloving and difficult relationship with Reese more generally. Meanwhile, as the circuit court noted (and defense counsel admitted), the recording did not evidence any actual *physical* violence by Reese against Kent, “from which Goplin would have needed to protect himself or his son at the time he stabbed his mother to death.”

¶27 In other words, the recordings did little to further support the need for the actions Goplin took beyond what the jury already heard during the trial. The admission of that evidence would have only demonstrated that Reese was verbally abusive to Kent, which was something the jury already knew from Kent’s numerous statements about Reese’s behavior toward him, including on the very day she died.

¶28 Furthermore, if the recordings and note had been admitted, their impact would not have been entirely beneficial to Goplin. As the circuit court noted, the note could be viewed as an admission/confession by Goplin, both in terms of its content and the fact that he wrote it shortly after the killing as he realized he was about to be taken into custody. Furthermore, any benefit to using the recordings and note to justify the level of force used would be muted without the jury hearing

Goplin testify—especially as to his state of mind at the time of the stabbing—which defense counsel were intent on not happening.

¶29 Goplin incorrectly insists that neither of his trial counsel testified that the reason for failing to offer the two items of evidence for admission at trial was strategic; rather, it was due to them believing the circuit court would admit the audio clips only if Goplin testified at trial. While Goplin’s counsel certainly were of the opinion that the court would not have allowed the recordings to be admitted without Goplin testifying, they said more regarding the basis for their decision not to offer the recordings and note into evidence at trial. One of Goplin’s attorneys acknowledged at the *Machner* hearing that there were downsides to the admission of the recordings. Specifically, he expressed his concern that jurors could dismiss Reese’s language “as just mere discipline—a grandmother disciplining a child,” rather than it “cross[ing] the line.” Co-counsel also conceded that she knew the State had character witnesses prepared regarding Reese to rebut anything in the recordings that would be admitted.

¶30 As to the last point, the circuit court, in its decision denying Goplin’s postconviction motion, also noted that the State was prepared on rebuttal to counter the recordings with evidence of Reese’s good character and “a loving and caring relationship between Reese and her grandchild that would have portrayed Reese in a more sympathetic light to the jury.” This evidence included Reese’s plans to move to Wausau so that Kent could receive a better education. The State was also prepared to present other evidence showing Reese’s care for Kent and that she would never hurt him. The State would have presented this evidence only if the recordings were admitted. Goplin’s only argument in reply on this point is an undeveloped and unpersuasive statement declaring that: “No amount of favorable

character evidence about the victim could have overcome the impact of what she said on those audio clips.”

¶31 Finally, the recordings (and note) do little to rebut the State’s primary argument at trial—and the primary issue for the jury’s consideration—which was that even if Goplin acted lawfully in disarming and physically stopping Reese, he lost any privilege through using excessive, and ultimately fatal, force against her. The State had ample evidence in support of this argument. There was evidence of both Reese (first) and Goplin (second) having control of the knife and suffering defensive wounds. But Reese had numerous physical disabilities (including emphysema, lung cancer, and overall difficulty in breathing), which suggests that it would not have been difficult for the younger Goplin to physically overpower her. Yet, Goplin stabbed her multiple times, including in the neck, head, stomach, and eight times in the back. Under these circumstances, none of which would have been changed by the recordings and note, the jury reasonably rejected Goplin’s argument that the killing was justified.

¶32 In sum, Goplin presented a strong perfect self-defense case to the jury, with significant evidence from Kent regarding his turbulent relationship with Reese. His counsel emphasized this evidence during closing arguments, including often playing Kent’s voice from the forensic interview for dramatic effect. The State was merely more successful, given the jury’s verdict, at convincing the jury that any privilege Goplin had in violently dealing with Reese that day was lost by him using excessive and fatal force. Under these circumstances, we conclude that Goplin failed to meet his burden of demonstrating that his trial attorneys’ performance prejudiced his defense. *See Strickland*, 466 U.S. at 694.

By the Court.—Judgment and order affirmed.

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

