COURT OF APPEALS
DECISION
DATED AND FILED

November 10, 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. 2025AP342-CR **Cir. Ct. No. 2017CF3608**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JUAN I. CUEVAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *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. Juan I. Cuevas appeals a judgment, entered after a jury trial, convicting him of first-degree reckless homicide by use of a dangerous

weapon and possessing a firearm while a felon, all as a repeat offender. He also appeals orders denying postconviction relief. He raises two claims. First, he argues that the circuit court coerced the jury's guilty verdicts by giving an improper response to a jury question. Second, he argues that his trial attorney was ineffective for failing to seek suppression of identification evidence on the ground that it was obtained through a live lineup that police conducted in violation of his right to counsel. We deny the first claim because we are satisfied that the circuit court did not coerce the guilty verdicts. We deny the second claim because doing so is required by a prior controlling decision of this court. Accordingly, we affirm.

BACKGROUND

¶2 On December 16, 2016, police responded to reports of a shooting outside of Cat Daddy's, a Milwaukee tavern. Officers found Andrico Slaughter lying in a snowbank near the door of the tavern. He was pronounced dead at the scene. A medical examiner conducted an autopsy and concluded that Slaughter died of a gunshot wound and that the death was a homicide. Detectives identified Cuevas as the suspected shooter. He was eventually located in Arizona and extradited to Wisconsin, arriving in Milwaukee on July 28, 2017. Upon his arrival, an officer prepared a probable cause statement—Form CR-215—and presented it to a court commissioner. The commissioner reviewed the form, found probable cause to believe that Cuevas had committed homicide, and set bail.

¶3 The next day, while Cuevas was in custody unable to post bail, police attempted to interview him about the homicide, but he declined to answer questions and said that he wanted a lawyer. Police then placed him in a live lineup, which was viewed by five witnesses who were at Cat Daddy's when Slaughter was shot.

Three of the witnesses identified Cuevas during the lineup as a person present at the tavern at the time of the shooting.

¶4 Approximately a week after the lineup procedure, the State filed a criminal complaint alleging that Cuevas shot Slaughter and that Cuevas was a felon at the time of the shooting. Based on the allegations, the State charged Cuevas with first-degree reckless homicide by use of a dangerous weapon and with possessing a firearm while a felon, both as a repeat offender.

¶5 Cuevas then retained an attorney and made an initial appearance, with counsel, on August 21, 2017. He entered pleas of not guilty, and the matter proceeded to a jury trial in June 2018.

¶6 At the close of the trial, the circuit court instructed the jury in conformity with WIS JI—CRIMINAL 484 and WIS JI—CRIMINAL 515, explaining that the jury must separately consider the two charges against Cuevas and reach a unanimous verdict as to each one:

> It's for you to determine whether the defendant is guilty of one or two or none of the offenses charged. You must make a finding of guilt or innocence as to each count of the information. Each count charges a separate crime, and you must consider each one separately.
>
> ....
>
> This is a criminal case, not a civil case; therefore, before a jury may return a verdict which may be legally received, such verdict must be reached unanimously. In a criminal case, all twelve jurors must agree in order to arrive at a verdict.

At the conclusion of the instructions, the jury retired to deliberate.

¶7 The circuit court docket reflects that the jury sent a written question to the court two hours and two minutes after deliberations began and a second

question twelve minutes later. As relevant here, one of the jury's questions was: "What do we, the jury, do in the instance we cannot unanimously agree on a charge?"[1] The circuit court did not conduct any proceedings on the record in regard to the inquiry. Rather, the court sent a written answer back to the jury room: "Continue to deliberate until you have a unanimous decision."

¶8 The jury signaled that it had reached verdicts a little more than an hour after submitting the last question. The jurors then returned to the courtroom and delivered two unanimous guilty verdicts. The circuit court immediately polled the jury, and each juror individually responded that the verdicts were his or her own.

¶9 In postconviction proceedings, Cuevas sought a new trial on the ground that the trial judge coerced the guilty verdicts by instructing the jurors to "continue deliberating until [they had] a unanimous decision." Cuevas contended that this language implicitly threatened the jurors that they would not be released from deliberations absent unanimous verdicts. Separately, Cuevas alleged that his trial counsel was ineffective for not moving to suppress the identification evidence obtained during the lineup on the ground that, because the State conducted the lineup after a probable cause determination, he was denied his constitutional right to counsel when he was not afforded an attorney for the procedure. The circuit court rejected both claims. Cuevas appeals.

DISCUSSION

¶10 We first consider Cuevas's claim that the circuit court's response to the jury's question coerced the verdicts. A circuit court has broad discretion in

[1] The jury's other question involved a request for a transcript, and the circuit court responded in writing that the transcript was not available. Neither the docket nor the record reveal which was the first and which was the second of the jury's two questions.

instructing the jury. ***State v. Hemphill***, 2006 WI App 185, ¶8, 296 Wis. 2d 198, 722 N.W.2d 393. That discretion extends to the circuit court's response to jury questions during deliberations. ***State v. Simplot***, 180 Wis. 2d 383, 404, 509 N.W.2d 338 (Ct. App. 1993). The circuit court must not, however, respond to the jury in a manner that tends to coerce or threaten jurors into agreement. ***State v. Echols***, 175 Wis. 2d 653, 666, 499 N.W.2d 631 (1993). We determine independently whether an instruction was coercive or otherwise misstated the law applicable to the question that the jury asked. ***Hemphill***, 296 Wis. 2d 198, ¶8. In conducting our review, "we consider the supplemental charge given by the [circuit] court 'in its context and under all circumstances.'" ***Echols***, 175 Wis. 2d at 666 (citation omitted).

¶11 In ***Echols***, our supreme court observed that Wisconsin courts have found jury instructions to be coercive in situations where "the jurors faced bodily discomfort and unhealthy conditions if they failed to reach a verdict quickly." ***Id.*** at 667. As examples of this type of situation, the ***Echols*** court pointed to two cases: ***Brown v. State***, 127 Wis. 193, 106 N.W. 536 (1906), where some of the jurors "were made seriously ill by cigar smoke of fellow jurors and were informed that they would be locked in the jury room for the night unless they reached a verdict quickly;" and ***Mead v. City of Richland Center***, 237 Wis. 537, 297 N.W. 419 (1941), where the circuit court informed the jury "that they would be kept in a cold room all night unless they all agreed to a verdict." ***Echols***, 175 Wis. 2d at 667.

¶12 Additionally, the instructions in ***Mead*** were coercive for a second reason: they included advisements that "those in the minority might well consider ... whether they are warranted in standing on their views as against that of their fellow jurors," and that "the four [jurors] who do not agree with the eight might well consider whether their judgment is better than the eight[.]" ***Id.***, 237 Wis. at 540. Our supreme court determined that these instructions improperly intimated

"that the four were not warranted in standing on their own views because ... eight [people] are more likely to be right than four[.]" ***Id.*** at 540-41.

¶13 In the instant case, by contrast, the circuit court neither suggested that Cuevas's jury would be made to suffer in unhealthy conditions during deliberations, nor implied that jurors holding a minority view were less likely to be right than were those in the majority. Further, the circuit court here polled each juror individually after receipt of the verdicts, and each juror attested to the guilty verdicts. As the ***Echols*** court explained, polling jurors after a verdict is announced helps to ensure that the verdict was not coerced because such polling "creat[es] individual responsibility ... and permits inquiry into the unanimity of the verdict." ***Id.***, 175 Wis. 2d at 668. Polling in the instant case thus adds support to the conclusion that the guilty verdicts here were not coerced. *See* ***id.*** at 668-69.

¶14 Cuevas urges us, in effect, not to place any weight on the foregoing circumstances and directs our attention to ***State v. Edelburg***, 129 Wis. 2d 394, 384 N.W.2d 724 (Ct. App. 1986). There, the jury advised that it had reached an impasse and we held that, to evaluate whether the circuit court's response to that advisement was coercive, we should not analyze the instruction for omission of an affirmative statement that the jury would be "made to agree, or be kept out indefinitely." ***Id.*** at 399. Instead, we explained, "we must determine whether the jury could reasonably conclude that the judge had said or inferred that they would be kept out until they reached a verdict, no matter how long that took." ***Id.***

¶15 Cuevas argues that the jurors could have inferred such a threat here because the circuit court instructed them to continue deliberating "until you have a unanimous decision," and Cuevas repeatedly emphasizes the court's use of the word "until" as key to his position. We reject this argument. As our supreme court long

ago explained, no threat is implied in a supplemental instruction to jurors to "return to their room and continue to deliberate upon the issues until they had arrived at a verdict." ***Odette v. State***, 90 Wis. 258, 263-64, 62 N.W. 1054 (1895). Such an instruction "was merely expressing the usual expectation that [the jurors] would agree." ***Id.*** at 264.

¶16 Further, we remind Cuevas that we must assess the circuit court's language in context. Critically, unlike in ***Edelburg***, where the jury revealed that it was at an impasse, the circuit court here was not responding to an advisement that the jury was deadlocked. Rather, the jury asked what to do "in the instance we cannot unanimously agree on a charge." We view this question as reflecting a request for guidance in a hypothetical circumstance that the closing instructions did not squarely address, namely, what the jury should do in the absence of unanimity on one of the two charges. *See* WIS JI—CRIMINAL 484, 515. The circuit court's response properly reflected that both verdicts must be unanimous and that the jurors should therefore continue deliberating if they did not have unanimity on both. The response constituted appropriate clarification in this circumstance.[2] *Cf.* ***Cramer v. Fahner***, 683 F.2d 1376, 1389 (7th Cir. 1982) (explaining that a non-deadlocked jury is less susceptible to coercion than is a jury at an impasse).

[2] We observe that courts in other jurisdictions have reached similar conclusions in similar circumstances. For example, the Minnesota Supreme Court determined that a jury note asking "[w]hat happens *if* we are unable to agree on the third charge" did not reflect a deadlock but rather sought guidance "in the event that the jury may become deadlocked in the future." ***State v. Cox***, 820 N.W.2d 540, 550-51 (Minn. 2012). The ***Cox*** court then held that the trial court responded appropriately by instructing the jury to continue deliberating. ***Id.*** at 551. In ***State v. Chapman***, 829 A.2d 1083, 1086 (N.H. 2003), the New Hampshire Supreme Court considered a jury question that included a statement that the jury was "stuck" as to one of two charges and asked about the evidence that could be considered. The ***Chapman*** court determined that the jury was seeking guidance and approved an instruction to "continue to deliberate until you've reached verdicts on both indictments," concluding that, in context, the instruction neither pressured the jury to reach a unanimous verdict nor persuaded the jurors to continue deliberating when they otherwise would not have done so. ***Id.*** at 1086-87.

¶17 Moreover, we agree with the State that it presented strong evidence of Cuevas's guilt, which makes "a coerced guilty verdict very unlikely." *See* ***Echols***, 175 Wis. 2d at 669. Cuevas disputes the strength of the evidence, characterizing it as circumstantial, but circumstantial evidence often is "stronger and more satisfactory than direct evidence." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Here, Billy Deverney, who described himself as Cuevas's close friend, testified that on the night of the shooting, he was at Cat Daddy's tavern when he saw Cuevas arrive in a silver four-door vehicle, park across the street from the tavern, and then join Deverney inside. The State also presented additional witnesses who saw Cuevas at Cat Daddy's that night and identified him in a lineup as the person who got into an argument at the tavern and then punched another patron before leaving, followed soon after by Slaughter.

¶18 Slaughter's girlfriend testified that she followed Slaughter out of the tavern and saw that he was arguing with a Hispanic male. While she watched, she saw the Hispanic male reach into a silver or dark grey four-door vehicle that was parked across the street from the tavern, retrieve a gun, and then shoot Slaughter. She acknowledged that she did not get a good enough look at the shooter's face to make a positive identification, but she saw the shooter get into the vehicle after the shooting and drive away. Deverney similarly told detectives that, after the shooting, he saw what he thought was Cuevas's silver car driving away from the scene, and Deverney testified that he never saw Cuevas again. Additional evidence showed that Cuevas fled Wisconsin for Arizona, evidencing consciousness of guilt. *See* ***State v. Winston***, 120 Wis. 2d 500, 505, 355 N.W.2d 553 (Ct. App. 1984).

¶19 Thus, the circuit court gave its challenged response to the jury's question in a case where the State presented strong evidence of Cuevas's guilt, the jury never asserted that it was at an impasse or complained about any aspect of its

accommodations, the jury was polled after returning its verdicts, and each juror affirmed that he or she agreed with the announced verdicts. In light of these circumstances, we conclude that the language of the response did not coerce a verdict or pressure the jurors to continue deliberating when they would not otherwise have done so. Accordingly, Cuevas fails to show that the circuit court erred.

¶20 As a separate matter, Cuevas claims that his trial counsel was ineffective for failing to seek suppression of the identification evidence obtained through the live lineup on the ground that the lineup procedure violated his right to counsel. We must reject this claim.

¶21 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). We need not address both prongs of the analysis if the defendant does not make a sufficient showing on one of them. ***Id.*** at 697.

¶22 Cuevas's claim falters on the deficiency prong. An attorney does not perform deficiently for failing to raise and argue an unsettled point of law. ***State v. McMahon***, 186 Wis. 2d 68, 84, 519 N.W.2d 621 (Ct. App. 1994). In a 2024 decision, this court concluded for the first time that the right to counsel attaches following a probable cause determination made upon review of a Form CR-215, and a defendant therefore must have access to counsel during a live lineup conducted after such a determination. ***State v. Robinson***, 2024 WI App 50, ¶¶23-24, 33-35, 413 Wis. 2d 534, 12 N.W.3d 535. The ***Robinson*** court also concluded, however, that the question was unsettled at the time of the defendant's 2018 trial. ***Id.***, ¶35. Therefore, the court held that the defendant could not show that his trial counsel

performed deficiently for failing to challenge the lineup based on a violation of the right to counsel. ***Id.***

¶23 As set forth at the outset of this opinion, the CR-215 probable cause determination and subsequent line-up in this case took place in 2017; Cuevas went to trial in 2018. We did not decide ***Robinson***, however, until 2024. Cuevas's right to counsel during the line-up was thus unsettled at the time of his trial. ***Robinson*** therefore governs Cuevas's ineffective assistance of counsel claim here, and this court cannot overrule ***Robinson***. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997) (holding that "the court of appeals may not overrule, modify or withdraw language from a previously published decision of the court of appeals"). We therefore conclude, as we must, that Cuevas's trial counsel did not perform deficiently for failing to seek suppression of the evidence obtained through the lineup on the ground that Cuevas was denied the right to counsel. For all the foregoing reasons, we affirm.

By the Court.—Judgment and orders affirmed.

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