COURT OF APPEALS
DECISION
DATED AND FILED

November 17, 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. 2025AP2086-CR **Cir. Ct. No. 2022CF2106**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TRAVARUS MARCELL PIERCE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID C. SWANSON, Judge. *Affirmed*.

Before Colón, P.J., Geenen, and Petrashek, 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. Travarus Marcell Pierce appeals from a judgment, entered upon a jury's verdict, for first-degree reckless homicide while using a dangerous weapon and possession of a firearm by a felon, as well as an order denying his motion for postconviction relief. Pierce argues: (1) that there was insufficient evidence to support his first-degree reckless homicide conviction; (2) that the circuit court erred in failing to designate Juror No. 10 as an alternate after it was discovered mid-trial that the juror had socialized with a testifying detective; and (3) that this court should use its discretionary power to order a new trial in the interest of justice. We reject Pierce's arguments and affirm.

BACKGROUND

¶2 On May 18, 2022, at approximately 7:30 a.m., Maseceo Cook was shot on the side of the road in the 3700 block of West Townsend Street in Milwaukee. He was pronounced dead on the scene. At about the same time, a 911 call reported a robbery attempt at Hometown Gas Station, located at the corner of North 35th Street and West Townsend Street. The gas station surveillance footage from that day led police to suspect that Pierce had committed the homicide. Pierce was charged with first-degree reckless homicide and possession of a firearm by a felon.

¶3 At trial, the State presented testimony from multiple Milwaukee Police Department (MPD) detectives and officers about the homicide investigation. Detective Alexander Klabunde testified that gas station surveillance footage showed Cook arrive on a bicycle. He entered the gas station and interacted with the driver of a silver Hyundai, who had gone inside the gas station to use the ATM. Cook attempted to grab something from the Hyundai driver. Then, when the Hyundai driver displayed a firearm, Cook ran out of the station

and across North 35th Street, with the Hyundai driver following him on foot. The Hyundai driver returned inside the station, and Cook attempted to follow him. When the Hyundai driver noticed Cook outside, he opened the gas station door and again pointed a firearm at Cook. Cook ran away again, but returned and was unable to open the door. Interior footage showed that patrons held the door closed from the inside, barring Cook's entry.

¶4 Soon after, a dark green Pontiac Torrent SUV[1] pulled up to the gas pumps. The driver, later identified as Pierce, exited the Pontiac and entered the station. Both Pierce and the Hyundai driver then exited the station. Outside, Pierce and Cook "square[d] off" against each other "in somewhat of a boxer stance," while the Hyundai driver stood behind Pierce. However, no physical altercation actually occurred.

¶5 Cook then pedaled his bike north through the gas station property and turned west on West Townsend Street. Seconds later, the Hyundai turned north onto North 35th Street, then proceeded west on West Townsend Street. Pierce followed in the Pontiac moments later, looping behind the station before turning west on West Townsend Street.

¶6 Detective Vincent Lopez testified that additional surveillance cameras captured events on West Townsend Street at the time of the homicide. An alley camera captured Cook riding his bicycle westbound on West Townsend Street, followed by a black Cadillac and, later, a dark green Pontiac Torrent.

[1] Although there was no evidence of multiple Pontiac Torrent SUVs involved in this encounter, witnesses described the vehicle as being different colors. For ease of reading, we refer to it as dark green.

Then, a different camera captured the Pontiac heading north on North 38th Street, followed shortly after by the black Cadillac. According to Lopez, under normal driving conditions, it would take 4 to 5 seconds for a vehicle to cover the distance between the areas recorded by the cameras, but it took the Pontiac 50 seconds to make the turn from West Townsend Street onto North 38th Street.

¶7 Detective Klabunde testified that the investigation into other vehicles on the Hometown surveillance footage led to Devin Pippins, who was driving a black Cadillac seen at the gas station that day. Pippins testified that while parked at the station, he observed a three-person argument over an attempted theft of car keys. He identified the dark green Pontiac Torrent SUV from the surveillance footage as being driven by a Black man with dreadlocks who was carrying a firearm. He identified that man as Pierce during a police identification array.

¶8 Pippins testified about the events that occurred on West Townsend Street after the trio left the gas station. He followed Cook, who was biking west on West Townsend Street, and stopped to tell him to go home because he was afraid that the man with the gun would "catch" Cook later. Pippins then parked his Cadillac; he observed the Pontiac drive down the street and slow down, at which point Cook got off his bike and "started knocking" on the front passenger window of the Pontiac. While Pippins could not hear the exchange, he saw that Cook "was flipping them off." The Pontiac pulled away and Cook walked back to his bike.

¶9 Then, the Pontiac made a U-turn and drove toward Cook. Pippins heard "a couple gunshots go off" and saw Cook fall off his bike. He stated the gunshots came from the Pontiac's passenger window. Once the Pontiac had gone,

Pippins drove over to Cook's body, but he could not tell if Cook was breathing. Pippins testified he drove off without calling 911 or reporting the shooting.

¶10 The State also called additional witnesses who testified about the investigation into Cook's shooting and the evidence recovered. An MPD detective testified about recovering a fired bullet next to Cook's body. The deputy chief medical examiner testified that the autopsy of Cook's body showed that he had been shot twice. One bullet was recovered during the autopsy. A firearms and tool mark examiner at the Wisconsin State Crime Laboratory testified that the two projectiles recovered were .45 caliber full metal jacket bullets, both of which had been fired through the same firearm barrel. Another MPD detective testified about recovering a box of .45 caliber ammunition in a search of the residence where Pierce was staying. A forensic scientist at the Wisconsin State Crime Laboratory testified that Pierce's DNA was not excluded from samples taken from inside the Pontiac.

¶11 The mother of Pierce's children testified that she consented to a search by the police of her residence, where Pierce was residing at the time of the shooting. She acknowledged that the police recovered .45 caliber ammunition and a 9mm firearm from her residence; she explained that the .45 caliber ammunition was for a gun she was considering purchasing. She also testified that based on her experience with Pierce's Pontiac, the passenger window did not move up and down.

¶12 On the second day of trial, when the State called Detective Klabunde, Juror No. 10 stated she may know the detective. When questioned by the court, Juror No. 10 explained that the detective was her friends' neighbor, and they had minor interactions at parties. Klabunde told the court they attended the

same party the Saturday before the trial but did not exchange more than a few words. Both the State and the circuit court asked whether Juror No. 10 could remain fair and impartial and not give special weight to Klabunde's testimony; she asserted she could. There were no motions to remove Juror No. 10 and the attorneys and court accepted keeping her on the jury, with the possibility of designating her as the alternate before deliberation. However, 2 other jurors from the 14-person panel were chosen at random as the alternates.

¶13 The jury returned a guilty verdict on both counts. At sentencing, the circuit court imposed a 35-year sentence for the reckless homicide count, bifurcated as 25 years of initial confinement and 10 years of extended supervision, and a concurrent sentence of 10 years for the felon in possession of a firearm count, bifurcated as 5 years of initial confinement and 5 years of extended supervision.

¶14 Pierce moved for postconviction relief, arguing that the circuit court should vacate his judgment of conviction. The court denied the motion. Pierce now appeals. Additional facts will be provided in the discussion below.

DISCUSSION

I. The evidence presented at trial was sufficient to support Pierce's convictions.

¶15 To prove first-degree reckless homicide, the State needed to prove beyond a reasonable doubt that: (1) Pierce caused Cook's death; (2) Pierce caused Cook's death by criminally reckless conduct; and (3) the circumstances of Pierce's conduct showed an utter disregard for human life. *See* WIS JI—CRIMINAL 1020. Pierce argues that the evidence was insufficient to establish that he caused Cook's death and that his conduct showed utter disregard for human life.

¶16 "The question of whether the evidence was sufficient to sustain a verdict of guilt in a criminal prosecution is a question of law," which we review independently. ***State v. Smith***, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. "Although the trier of fact must be convinced that the evidence presented at trial is sufficiently strong to exclude every reasonable hypothesis of the defendant's innocence in order to find guilt beyond a reasonable doubt," on appeal, the reviewing court may not substitute its "judgment for that of the trier of fact unless the evidence, viewed most favorably to the [S]tate and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably," could have found the requisite guilt. ***State v. Poellinger***, 153 Wis. 2d 493, 503, 507, 451 N.W.2d 752 (1990). "It is well established that a finding of guilt may rest upon evidence that is entirely circumstantial and that circumstantial evidence is oftentimes stronger and more satisfactory than direct evidence." ***Id.*** at 501.

¶17 Pierce argues that no reasonable jury could have reached this verdict given serious inconsistencies in Pippins' testimony. But, as demonstrated below, the record reflects that these conflicting facts were presented to the jury. "The function of the jury is to decide which evidence is credible and which is not and how conflicts in the evidence are to be resolved." ***Id.*** at 503.

¶18 Pierce asserts that Pippins was not credible because some of his testimony was inconsistent with that of other witnesses. First, Pippins testified that he saw Pierce with a gun during the gas station altercation with Cook, even though the surveillance footage and Detective Klabunde's testimony established that only the Hyundai driver pointed a gun at Cook at the gas station. Second, Pierce notes that in Pippins police interview with Detective Lopez after the shooting, Pippins said he viewed the shooting through his vehicle's rear-view mirror, whereas Pippins' testimony was that he saw the shooting through his front

vehicle window. In addition to Pippins' claim about his vantage point for the shooting, he also testified the gunshots came from the passenger window of the Pontiac. However, the mother of Pierce's children testified that based on her experience with Pierce's Pontiac, the passenger window did not move up and down.

¶19 Pierce further contends that Pippins' credibility was weakened by internal inconsistencies in his own testimony. One example was Pippins' testimony that he went to the police within a few days of the shooting, which was entirely refuted by Detective Lopez's testimony that Pippins did not contact the police at all and instead the police found him through their investigation of other vehicles in the gas station surveillance footage. A second example was Pippins' claim that he had followed Cook because he was worried about Cook's wellbeing, which Pierce regards as insincere because Pippins failed to call 911 after the shooting. As a third example, Pierce offers Pippins' claim that he was a regular visitor to Hometown Gas Station but did not recognize Cook or anyone else there on the day of the shooting.

¶20 Ultimately, none of the testimonial inconsistencies show that the jury acted outside "the bounds of reason" in reaching its decision. *See* ***Poellinger***, 153 Wis. 2d. at 503. Pippins' testimony was not incredible or inherently unreliable. "It is certainly allowable for the jury to believe some of the testimony of one witness and some of the testimony of another witness even though their testimony, read as a whole, may be inconsistent." ***State v. Toy***, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985).

¶21 The matter of witness credibility was addressed at trial. Pierce's trial counsel highlighted inconsistencies in Pippins' story point-by-point during

closing arguments. Based on the evidence, the jury could reasonably conclude that Pippins had misidentified Pierce as the man with the gun at the gas station, but had credibly testified that Pierce's Pontiac was involved in the shooting. The jury also could reasonably conclude that Pippins had misremembered the direction his vehicle was facing during the shooting, and that he did not call 911 for fear of retribution. And the jury could have disbelieved the testimony of the mother of Pierce's children about the non-operability of the passenger side window on Pierce's Pontiac.

¶22 Our appellate review considers the evidence in the light most favorable to the verdict and generally does not permit us to choose which version of events is credible. *See* ***Poellinger***, 153 Wis. 2d at 500. We search the record to determine whether "any possibility exists" that the jury could have made its findings from the evidence adduced at trial, and we will not overturn that verdict even if this court believes the jury "should not have found guilt based on the evidence before it." ***Id.*** at 507. The circumstantial evidence set forth above is more than sufficient to support the jury's determination that Pierce caused Cook's death under circumstances that showed utter disregard for human life.[2]

[2] Although Pierce also argues that the State did not present a motive for Pierce to shoot Cook, motive is not an element of a reckless homicide offense. In any case, there was evidence of Pierce's anger at Cook; Pierce and Cook had been in an altercation at the gas station, and Pippins testified that Cook confronted Pierce by pounding on his vehicle window and flipping him off prior to the shooting.

Pierce also emphasizes the lack of physical evidence. The absence of the murder weapon or DNA evidence clearly linking Pierce to Cook's homicide does not diminish the validity of a jury verdict based on circumstantial evidence. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990) ("It is well established that a finding of guilt may rest upon evidence that is entirely circumstantial and that circumstantial evidence is oftentimes stronger and more satisfactory than direct evidence.").

II. Pierce has not demonstrated objective juror bias; therefore, the circuit court did not err when it did not designate Juror No. 10 as an alternate.

¶23 Pierce argues that Juror No. 10 was objectively biased and the circuit court committed plain error by failing to make Juror No. 10 an alternate. As discussed above, Juror No. 10 notified the court that she personally knew Detective Klabunde. After the juror stated that she could remain impartial, Pierce offered no objections, and Juror No. 10 was not designated as an alternate.

¶24 The State argues that Pierce has forfeited the juror bias issue by failing to object at trial. The State further argues that the plain error doctrine under WIS. STAT. § 901.03(4) (2023-24)[3] cannot apply, as it is applicable only to evidentiary issues.[4]

¶25 "The plain error doctrine allows appellate courts to review errors that were otherwise waived by a party's failure to object." ***State v. Jorgensen***, 2008 WI 60, ¶21, 310 Wis. 2d 138, 754 N.W.2d 77. "Generally, if a claim is forfeited, we address that claim in the context of ineffective assistance of counsel." ***State v. Counihan***, 2020 WI 12, ¶28, 390 Wis. 2d 172, 938 N.W.2d 530.

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

[4] Plain error pursuant to WIS. STAT. § 901.03(4) is an evidentiary rule within the Wisconsin Rules of Evidence. However, Wisconsin case law has applied the concept of plain error to claims of improper trial commentary by the prosecutor, comments which are expressly not evidence under standard jury instructions. *See* WIS JI—CRIMINAL 50, 160; *see e.g.*, ***State v. Bell***, 2018 WI 28, ¶¶19, 59, 380 Wis. 2d 616, 909 N.W.2d 750 (analyzing the prosecutor's comments during voir dire, opening statements, and closing arguments for plain error); ***State v. Jorgensen***, 2008 WI 60, ¶¶20, 41, 310 Wis. 2d 138, 754 N.W.2d 77 (analyzing the prosecutor's closing arguments for plain error); ***State v. Mayo***, 2007 WI 78, ¶¶2-3, 301 Wis. 2d 642, 734 N.W.2d 115 (analyzing the prosecutor's opening statement and closing arguments for plain error). While this case law would support applying the plain error doctrine more expansively than the State suggests, we need not resolve that issue because Pierce has failed to show that his constitutional right to a "fair trial by a panel of impartial jurors" was violated. *See* ***State v. Faucher***, 227 Wis. 2d 700, 715, 596 N.W.2d 770 (1999).

However, Pierce has not argued he received constitutionally ineffective assistance, and we decline to address undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). As our supreme court concluded when presented with a scenario where a defendant might argue plain error or ineffective assistance of counsel, there "can be neither a deficiency nor plain error," unless there was an improper action or error. ***State v. Bell***, 2018 WI 28, ¶14, 380 Wis. 2d 616, 909 N.W.2d 750. Therefore, we begin by considering whether Juror No. 10 exhibited objective bias.

¶26 "[A] criminal defendant's right to receive a fair trial by a panel of impartial jurors is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Art. I, § 7 of the Wisconsin Constitution, as well as principles of due process." ***State v. Faucher***, 227 Wis. 2d 700, 715, 596 N.W.2d 770 (1999). For a juror to be impartial, they "must be indifferent and capable of basing his or her verdict upon the evidence developed at trial." ***State v. Lepsch***, 2017 WI 27, ¶21, 374 Wis. 2d 98, 892 N.W.2d 682 (citation omitted).

¶27 Objective bias impairs a juror's impartiality and is determined by considering whether a reasonable person in the juror's position could remain impartial. ***Faucher***, 227 Wis. 2d at 718. The circuit court must evaluate the facts and circumstances of the challenged juror's responses to determine whether objective bias exists. ***State v. Delgado***, 223 Wis. 2d 270, 283, 588 N.W.2d 1 (1999).[5] Whether a juror was objectively biased is a mixed question of fact and

[5] The circuit court is guided by three non-exclusive factors when assessing objective bias, factors which generally focus on the facts surrounding voir dire and the juror's disclosure of information. *See* ***State v. Funk***, 2011 WI 62, ¶39, 335 Wis. 2d 369, 799 N.W.2d 421. Here, this matter was not considered a failure to disclose information during voir dire. Juror No. 10 did not speak up during voir dire, but she did inform the court as soon as she realized that she might know Klabunde.

law. ***Faucher***, 227 Wis. 2d at 720. While the circuit court's findings of fact will be upheld unless clearly erroneous, "[w]hether those facts fulfill the legal standard of objective bias is a question of law." ***Id.***

¶28 We conclude that Juror No. 10's minimal socialization with a testifying State witness did not rise to the standard of objective bias. The juror's interactions with Detective Klabunde were minimal and superficial. The circuit court and counsel both considered Juror No. 10's averment of impartiality sufficient to not take any further steps during trial, such as designating her an alternate or making an objection. Given the *de minimis* nature of the contact between Juror No. 10 and Klabunde, we conclude a reasonable person in the juror's position could remain impartial. Accordingly, Pierce has not demonstrated that Juror No. 10 exhibited objective bias. Therefore, Pierce has not shown plain error in the court's handling of this issue or deficiency on the part of counsel.

III. Discretionary reversal is not warranted.

¶29 This court may exercise our power of discretionary reversal "if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried." WIS. STAT. § 752.35; ***State v. Klapps***, 2021 WI App 5, ¶31, 395 Wis. 2d 743, 954 N.W.2d 38. This authority is only exercised in "exceptional cases" and is to be used "infrequently and judiciously." ***State v. Avery***, 2013 WI 13, ¶38, 345 Wis. 2d 407, 826 N.W.2d 60 (citations omitted).

¶30 Pierce argues that the real controversy over who shot Cook has yet to be tried and it is a miscarriage of justice for him to be convicted solely on shaky circumstantial evidence. As discussed above, neither his sufficiency of the evidence claim nor his objective bias claim provides a basis for a new trial or

reversal. Pierce has not shown that this case is exceptional. *See* ***State v. McKellips***, 2016 WI 51, ¶52, 369 Wis. 2d 437, 881 N.W.2d 258. We are not persuaded that the controversy was inadequately tried or that justice has been miscarried. Accordingly, we decline to use our discretionary power to grant a new trial. We affirm the judgment of conviction and the order denying postconviction relief.

By the Court.—Judgment and order affirmed.

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