

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 25, 2012

Diane M. Fremgen
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. 2011AP1964

Cir. Ct. No. 2005CF2117

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MAFAYETTE FIELDS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DENNIS R. CIMPL, Judge. *Affirmed.*

Before Lundsten, P.J., Sherman and Blanchard, JJ.

¶1 PER CURIAM. Mafayette Fields appeals an order denying his WIS. STAT. § 974.06 (2009-10)¹ postconviction motion in which he sought to vacate his

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

guilty plea to first-degree reckless homicide. He argues: (1) his trial counsel was ineffective in numerous respects; (2) the court erred when it denied his motion to suppress his confession; (3) prosecutorial misconduct based on the assistant district attorney's "threat" to raise the charge to first-degree intentional homicide, the prosecutor allegedly providing misleading statements regarding DNA evidence and presenting false evidence, and the prosecutor's allegedly withholding exculpatory evidence based on a witnesses "recantation;" (4) his plea was involuntary due to the State's "threat" and unknowing because he was unaware of the correct status of the DNA evidence and the "recantation;" (5) the court improperly exercised its discretion by denying his request for counsel for the postconviction hearing; and (6) the court reporter failed to transcribe the complete hearing. We reject these arguments and affirm the order.

BACKGROUND

¶2 Fields was initially charged with first-degree reckless homicide while armed, operating a vehicle without the owner's consent, and possession of a firearm by a felon. The complaint alleged that Fields shot and killed Kelby Jacobs and then fled in Jacob's vehicle. Megan Hickles, Fields' girlfriend, told police that Fields called her and asked whether he should rob Jacobs, Fields' longtime friend. Approximately one hour later, Fields called again to say that he needed a cab or a ride home, indicating that his clothing was full of blood. Fields called again a few minutes later stating that he was coming to Hickles' sister's house and Hickles should cancel the cab. A few minutes later, Fields arrived and stated that he had gone to rob Jacobs at gun point, and when Fields pulled out the gun, Jacobs rushed him. Fields then shot Jacobs. Hickles stated that Fields gave her a bag and keys and told her to get rid of them. She hid them in a garbage can.

¶3 When Fields was interviewed by police, he told them he met Jacobs three years earlier. He and Jacobs were watching television and drinking beer at Jacobs' residence. Jacobs grabbed Fields' penis. Fields pushed Jacobs away and they began to argue. Fields stated that he pulled out a gun and, when Jacobs charged him, Fields shot him more than once. Fields then grabbed a cell phone and a set of keys and fled in Jacobs' vehicle.

¶4 The medical examiner found that Jacobs suffered three gunshot wounds, one through his hand, one in his chest, and one in his head, entering behind his ear and exiting the occipital region. Either the chest shot or the head shot were sufficiently serious injuries to kill him.

¶5 After a preliminary hearing and after the court denied Fields' motion to suppress his confession, the State offered a plea agreement. In return for Fields' guilty plea to first-degree reckless homicide, the State would not raise the charge to first-degree intentional homicide, would drop the weapons enhancer, and would dismiss the other charges in the complaint and would not prosecute an unrelated cocaine charge. Fields accepted this offer, and entered a plea. During the plea colloquy, he told the court of the State's "threat" to raise the homicide charge to first-degree intentional homicide. The court found Fields' plea was freely, voluntarily, knowingly, and intelligently entered.

DISCUSSION

Ineffective Assistance of Counsel

¶6 To establish ineffective assistance of counsel, Fields must show that his counsel's performance was both deficient and prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In order to satisfy the prejudice prong, he

must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

¶7 Fields argues that his trial counsel was ineffective because she failed to file several pretrial motions. Counsel failed to file a motion for a speedy trial. However, Fields filed a pro se motion for a speedy trial on June 1, 2005, six weeks after the complaint was filed, and before his counsel filed a motion to suppress his confession. He entered the guilty plea five months after he was charged. There was no inordinate delay; some of the delay was based on the defense motion; and Fields identifies no prejudice arising from the delay. Therefore, he meets none of the criteria for a constitutional speedy trial claim, *see Barker v. Wingo*, 407 U.S. 514, 530 (1972), and he has not established any prejudice from his counsel's failure to file a speedy trial motion.

¶8 Fields next argues that his counsel should have filed a motion to suppress his confession on the basis of an unlawful arrest. He states, "[T]he Milwaukee police dept. searched everyone leaving the apartment complex." He does not indicate that he was arrested or searched at that time or that any evidence was seized from him during an unlawful search. Fields lacks standing to vindicate the constitutional rights of any other person. *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978). Fields notes that there was no arrest warrant. However, a warrantless arrest is lawful when it is supported by probable cause. *State v. Secrist*, 224 Wis. 2d 201, 212, 589 N.W.2d 387 (1999). Fields does not argue that the police lacked probable cause at the time of his arrest.

¶9 Fields also argues that his counsel should have filed a motion to suppress Hickles' statements because she recanted her initial statement, indicating

that she did not remember using the words “during the robbery” when she spoke with police, although she admitted she “may have used those words but does not remember doing so.” Even if Hickles’ revised statement was significant, that would not constitute a basis for suppressing her earlier statement. At best, it would provide a basis for cross-examination. The discrepancy goes to the weight of her statements, not their admissibility.

¶10 Fields next faults his trial counsel for failing to review discovery materials, alleging that DNA evidence would prove the shirt and the jacket that were tested were not Fields’ clothing. Fields apparently believes that his DNA would be found on any clothing he wore. He does not identify any authority for that proposition. Hickles identified the clothing Fields was wearing on the night of the crime. DNA tests revealed that Jacobs’ blood was on the clothing. Hickles had no reason to fabricate Fields’ involvement in the homicide. A competent attorney would not pursue the issue of whether DNA evidence would confirm that Fields was wearing that clothing. In light of his confession, his attorney reasonably pursued a favorable negotiated plea rather than pursuing a spurious defense.

¶11 Fields next faults his trial counsel for failing to inform him of Hickles’ revised statement. However, at the postconviction hearing, the court made a finding of fact that Fields’ counsel talked with him about the change in the statement the day before the plea hearing. Because that finding is not clearly erroneous, *see* WIS. STAT. § 805.17(2), there is no factual underpinning for Fields’ argument.

¶12 Fields contends that he would not have entered the guilty plea had he known that Hickles changed her statement. The circuit court properly rejected that

argument because the change relates only to Hickles' memory of whether she told the police the homicide occurred during a robbery. She did not say the police falsified their reports, but only that she did not remember saying that. In light of his own confession, the phone calls, the bloody clothes, Fields' use of Jacobs' cell phone and taking Jacobs' vehicle, Fields had no viable defense and there is no reason to believe he would have gone to trial based on Hickles' revised statement.

¶13 Fields next faults his trial counsel for failing to explain the penalty structure and misinforming the court that there was no sentencing guideline for first-degree reckless homicide. Fields was repeatedly informed of the maximum sentences. His argument confuses the sentencing guidelines with the maximum sentences. His counsel correctly stated that there was no sentencing guideline for first-degree reckless homicide.

¶14 Finally, Fields argues that his attorney violated attorney-client privilege by informing the court at the sentencing hearing that Fields' statements to her were the same as the statements he made to police. Fields has not established any prejudice from his counsel's attempt to mitigate the offense by showing that he consistently denied any plan to rob Jacobs, which would have been the basis for the greater charge of first-degree intentional homicide.

Fields' Suppression Motion

¶15 Fields argues that the court should have suppressed his confession because he never gave up his right to remain silent. At the suppression hearing, Fields testified that he said nothing during the eight-hour interview and the officers lied when they testified about his confession. The circuit court made a credibility determination that defeats Fields' argument, finding that Fields voluntarily spoke with the officers.

Prosecutorial Misconduct

¶16 Fields argues that the assistant district attorney improperly threatened him to induce his guilty plea by indicating that the information would be amended to allege first-degree intentional homicide. From the testimony adduced at the preliminary hearing, a charge of first-degree intentional homicide would have been supported by probable cause. The evidence indicated that Fields discussed robbing Jacobs. Since Jacobs knew him, he had a motivation to kill Jacobs to avoid responsibility for the robbery. Based on that theory of the case, the State had sufficient evidence to support amending the information. A threat to a defendant that presents him with the unpleasant alternatives of foregoing trial or facing charges on which he was plainly subject to prosecution does not violate his due process rights. *Bordenkircher v. Hayes*, 434 U.S. 357, 365 (1978).

¶17 Fields also alleges prosecutorial misconduct for the assistant district attorney's "misrepresentation" that Jacobs' DNA was found on Fields' clothing and for withholding information about Hickles' "recantation." As previously discussed, the statement that it was Fields' clothing is based on Hickles' statement. There was no misrepresentation regarding the DNA evidence. Fields' argument about withholding Hickles' revised statement is not factually supported based on the circuit court's finding that Fields and his trial attorney discussed the revision the day before the plea hearing.

Involuntary and Unknowing Plea

¶18 Fields' arguments that his plea was involuntary and unknowing fail for reasons previously discussed. The assistant district attorney's "threat" to charge first-degree intentional homicide does not render his plea involuntary. His

argument that the plea was unknowingly entered because he did not know of Hickles' revised statement is contrary to the facts as found by the circuit court.

Appointment of Counsel for the Postconviction Motion

¶19 Fields argues that the court abused its discretion by failing to appoint counsel for his postconviction motion. A motion under WIS. STAT. § 974.06 is a civil collateral attack on the conviction. A defendant has no right to counsel for this proceeding. See *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). In addition, in light of the meritless issues raised in the motion, Fields provides no reason to believe discretionary appointment of counsel would have produced a different result.

Errors in the Transcript

¶20 Finally, Fields argues that the transcripts are inaccurate because he believes the June 8, 2011 transcript fails to reflect a conversation between the assistant district attorney, Fields' trial counsel, and the judge. There is no reason to believe the transcript is inaccurate and Fields does not allege or establish any significance to the alleged missing conversation.

By the Court.—Order affirmed.

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

