OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

August 20, 2025

To:

Hon. Steven M. Cain
Circuit Court Judge
Electronic Notice

Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
Electronic Notice

Antonella Aleman-Zientek
Electronic Notice

Michael J. Conway
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Ellen J. Krahn
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1151-CR	State of Wisconsin v. Charles Samuel Green, III (L.C. #2019CM328)
2023AP1152-CR	State of Wisconsin v. Charles Samuel Green, III (L.C. #2019CF356)
2023AP1153-CR	State of Wisconsin v. Charles Samuel Green, III (L.C. #2019CM379)

Before Neubauer, P.J., Gundrum, and Lazar, JJ.

Summary disposition orders 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).

In these consolidated cases, Charles Samuel Green, III, appeals from judgments of conviction and an order denying postconviction relief. He contends that the circuit court erred in denying his claims of ineffective assistance of counsel. He further contends that he is entitled to a new trial in the interest of justice. Based upon our review of the briefs and records, we

conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] We affirm.

In 2019, the State charged Green with numerous crimes involving his ex-wife. The charges, arising from three separate cases, were burglary, stalking, false imprisonment, using a computer message to threaten harm, criminal trespass, two counts of felony intimidation of a victim, three counts of misdemeanor bail jumping, and four counts of violating a domestic abuse injunction.

The cases were joined together for trial. There, a jury heard testimony from multiple witnesses, including Green's ex-wife Chloe and one of their sons, Shane.[2] This appeal concerns portions of their testimony.

First, at the end of Chloe's direct examination, the prosecutor asked if she felt any safer upon learning that Green was picked up in Illinois after an incident in which he had entered her house, grabbed her, and pinned her down. Chloe replied, "Yes and no. Yes because I knew he was behind bars. But no because I didn't know if he would have anybody else coming after me." Green, through trial counsel, moved to strike the "behind bars" comment. The circuit court declined to do so. Instead, the court instructed the jury that it was "not to infer anything from" Chloe's testimony that Green was "behind bars." It added that the statement "has no bearing on

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

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use pseudonyms for Green's ex-wife and son.

the outcome of this case," and was "not to be considered for purposes of your deliberations in this case." The court repeated this admonition in the final jury instructions.

Second, when testifying about the same incident, Shane said that he locked his bedroom door upon learning that Green was in the house. When the prosecutor asked why, Shane replied, "[M]y dad sometimes hit me as a kid, like little. And I was kind of scared because I didn't know what was happening." Green's trial counsel did not object to this answer. Indeed, he explored the subject more during cross-examination. Counsel asked Shane whether he was scared when he first heard that Green was in the house that day. When Shane responded affirmatively, counsel asked why. Shane replied that he was scared because Green would sometimes hit him as a toddler. Counsel asked Shane whether he thought that was going to happen that day. When Shane again responded affirmatively, counsel proceeded to elicit admissions from Shane that contradicted his stated fear.[3]

Ultimately, the jury found Green guilty on all charges. The circuit court imposed an aggregate sentence of thirteen and one-half years of initial confinement and twelve and one-half years of extended supervision.

After sentencing, Green moved for postconviction relief on grounds of ineffective assistance of counsel. Specifically, Green faulted trial counsel for (1) failing to move for a mistrial in response to Chloe's "behind bars" comment; and (2) failing to object to, and then further elicit, evidence that Shane was scared of Green because he had hit him as a young child.

[3] For example, Shane acknowledged leaving his bedroom, talking to Green for 15 minutes, and not alerting Chloe to Green's presence.

After a partial evidentiary hearing on the matter,[4] the circuit court denied the motion. This appeal follows.

On appeal, Green first contends that the circuit court erred in denying his claims of ineffective assistance of counsel. To establish such a claim, a defendant must show both that counsel's performance was deficient and that such performance prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). A reviewing court need not address both prongs of the analysis if the defendant makes an insufficient showing on either one. ***Id.*** at 697.

When a defendant pursues postconviction relief based on ineffective assistance of counsel, the defendant must preserve counsel's testimony at an evidentiary hearing. ***State v. Curtis***, 218 Wis. 2d 550, 554-55, 582 N.W.2d 409 (Ct. App. 1998). However, the defendant is not automatically entitled to such a hearing. If the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has discretion to deny a hearing. ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

Here, we are satisfied that the circuit court properly denied Green's first claim of ineffective assistance of counsel without an evidentiary hearing. Had Green's trial counsel moved for a mistrial in response to Chloe's "behind bars" comment, the court would have

[4] The circuit court denied Green's request for an evidentiary hearing on his first claim of ineffective assistance of counsel. However, it ordered an evidentiary hearing on his second claim. There, Green's trial counsel testified to the strategy behind allowing/eliciting evidence of Shane's fear of Green on the day Green entered the house. Counsel explained that he wanted to explore the subject because Green was "adamant" that Shane did not actually fear him and had let him in the house. If Green was right and Shane testified to that effect, such evidence would undermine the burglary charge. If Green was wrong and Shane reiterated his fear of him, then counsel could impeach Shane by showing how his subsequent actions were inconsistent with that fear. Thus, counsel calculated that Green would benefit either way.

undoubtedly denied it. That is evident from the fact that the court declined counsel's lesser request to strike the comment in favor of a curative jury instruction. Given this record, counsel cannot be faulted for failing to make the motion. *See* ***State v. Simpson***, 185 Wis. 2d 772, 784, 519 N.W.2d 662 (Ct. App. 1994) (an attorney is not ineffective for not making a motion that would have been denied).

Likewise, we are satisfied that the circuit court properly denied Green's second claim of ineffective assistance of counsel. As noted, at the evidentiary hearing, Green's trial counsel testified to the strategy behind allowing/eliciting evidence of Shane's fear of Green on the day Green entered the house. The court accepted this explanation as reasonable, stating, "I just think that this is largely strategy that didn't pan out in the way that Mr. Green and [trial counsel] had hoped." Because counsel articulated a reasonable strategy for his actions, we cannot say that his performance was deficient. *See* ***State v. Libecki***, 2013 WI App 49, ¶25, 347 Wis. 2d 511, 830 N.W.2d 271 (a valid strategy is not deficient performance).

Finally, Green contends that he is entitled to a new trial in the interest of justice. He asks for this relief pursuant to WIS. STAT. § 752.35, which allows this court to reverse a judgment "if it appears from the record that the real controversy has not been fully tried…."

We exercise our discretionary power to grant a new trial infrequently and judiciously. ***State v. Ray***, 166 Wis. 2d 855, 874, 481 N.W.2d 288 (Ct. App. 1992). We have already determined that Green is not entitled to relief as to the claims discussed above. We are not convinced that the real controversy was not fully tried. Therefore, we decline to order a new trial pursuant to WIS. STAT. § 752.35.

Upon the foregoing reasons,

IT IS ORDERED that the judgments and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals