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DISTRICT II

September 17, 2025

To:

Hon. Jon E. Fredrickson
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

Joshua Weishaar
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP1208 State of Wisconsin v. Anthony Dewaayne Lewis
(L.C. #2008CF1073)

Before Neubauer, P.J., Grogan, 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).

Anthony Dewaayne Lewis appeals an order denying his WIS. STAT. § 974.06 motion for plea withdrawal. On appeal, Lewis argues the circuit court erred by determining counsel was not ineffective. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] We affirm.

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

This is the second time this case is before us. In 2008, Lewis shot the victim, who later died at the hospital. In 2009, Lewis pled guilty to an amended charge of first-degree reckless homicide. He was sentenced to prison. Following sentencing, Lewis filed a postconviction motion, seeking plea withdrawal on the basis that trial counsel was ineffective for failing to file a suppression motion relating to whether police had probable cause to arrest him. Lewis also claimed his plea was not knowingly, voluntarily, or intelligently entered. Ultimately, the circuit court denied Lewis's plea withdrawal motion, and, in 2014, we affirmed. ***State v. Lewis***, No. 2013AP2306-CR, unpublished slip op. (WI App Aug. 13, 2024).

In 2023, Lewis, by counsel, filed another plea withdrawal motion. In support, Lewis argued he only pled to the amended first-degree reckless homicide charge because trial counsel advised him that a surveillance video of the shooting did not support his claims of self-defense. Lewis emphasized that, at the 2013 ***Machner***[2] hearing, when trial counsel was asked why he believed police had probable cause to arrest Lewis, Lewis's trial counsel explained, in part,

> [S]everal witnesses identified a guy named Memphis as the shooter.
>
> He was identified not only because they knew him as Memphis, but because he was wearing an orange shirt. There were several witnesses that the police indicate that the only person in the bar that night with an orange shirt was Memphis. There was a video that showed the orange shirt person shooting.
>
> The police in their files had a record that Memphis was an alias for Mr. Lewis.

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

Lewis claimed trial counsel never showed him this surveillance video before his plea, and Lewis believed the surveillance video never existed. Lewis argued trial counsel was ineffective, and he should be permitted to withdraw his plea.

At another ***Machner*** hearing, trial counsel stated that he had reviewed the transcript from the previous ***Machner*** hearing where he spoke about a video showing the shooting, and,

> I think I was mistaken when I said that, okay. There's no video tape, I mentioned later in that testimony about reviewing a video, at that time I was talking about the video of his own statement. What I think when I said that at this motion hearing, what four five years later I was mistaken.

Trial counsel explained that the video of Lewis's police interrogation and other witnesses undermined Lewis's self-defense argument. In the video, Lewis admitted to shooting and other factors in this case. Counsel testified that he had reviewed his notes and correspondence from Lewis's case, and he had "repeatedly [advised Lewis] that the video of him and the statements did not support what he was telling me later about self-defense." Counsel stated that nothing in his notes or correspondence to Lewis mentioned a surveillance video of the shooting that undermined Lewis's self-defense claims, and counsel had "no recollection and no indication from anything that I ever had such a video, a surveillance video of the shooting."

Lewis testified trial counsel told him a surveillance video of the shooting disproved his claims of self-defense, and that is why he decided to enter a plea in the case. Lewis admitted he never mentioned the surveillance video to either of his appellate attorneys, and there was no mention of a surveillance video in the police reports that he received.

The circuit court denied Lewis's motion for plea withdrawal. In a written decision, the court found trial counsel credible and counsel's "testimony that he misspoke about the

surveillance video in 2013 … credible, and supported by the record in this case that there is no surveillance video." The court noted that "[t]here is nothing in the court evidence list, the police report, or any attorney discovery files that would indicate that a surveillance video ever existed."

The circuit court also found Lewis not credible. The court observed that although Lewis testified trial counsel told him of the surveillance video before he pled, "Lewis did not mention the existence of a surveillance video in his September 2010 letter to the [circuit] court wherein he set forth in great detail his self-defense argument and his reason for entering a plea (i.e. [trial counsel] telling him he would only get 5 - 10 years confinement)." The court also observed that:

> [Lewis] didn't ask for a copy of the surveillance video in his October 2011 request for case materials he hadn't seen before. Lewis didn't discuss the surveillance video with his first postconviction counsel prior to filing his first ineffective assistance of counsel motion and appeal. Lewis didn't ask his first postconviction counsel to review the surveillance video to determine whether it really did undermine his self-defense claim. The first mention of the surveillance video was during [trial counsel's] testimony at the 2013 ***Machner*** hearing. Lewis then waited over 3 1/2 years, until June 2017, to request a copy of the surveillance video. None of these actions by Lewis are logical if he knew about a surveillance video in 2009 before his plea was entered.

The court denied the motion. Lewis appeals.

A defendant seeking to withdraw a plea after sentencing must establish plea withdrawal is necessary to correct a manifest injustice. ***State v. Savage***, 2020 WI 93, ¶24, 395 Wis. 2d 1, 951 N.W.2d 838. "One way to demonstrate manifest injustice is to establish that the defendant received ineffective assistance of counsel." ***Id.***, ¶25 (citation omitted). To prevail on a claim of ineffective assistance of counsel, the defendant must prove both that his lawyer's representation was deficient and that he suffered prejudice because of that deficient performance. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).

A claim of ineffective assistance of counsel is a mixed question of fact and law. ***State v. Thiel***, 2003 WI 111, ¶21, 264 Wis. 2d 571, 665 N.W.2d 305. We will uphold the circuit court's findings of fact, including credibility determinations, unless they are clearly erroneous. ***Id.***, ¶¶21, 23. The ultimate determination of whether counsel's assistance was ineffective is a question of law, which we review de novo. ***Id.***, ¶21.

On appeal, Lewis asserts trial counsel was an "incompetent" witness because counsel did not recall certain events from before Lewis's plea. Lewis argues the circuit court committed plain error by considering trial counsel's testimony from the second ***Machner*** hearing. Lewis also argues that the court erred by determining Lewis's testimony was not credible.

We conclude the circuit court properly denied Lewis's plea withdrawal motion. First, the plain error doctrine does not apply to this case. The plain error doctrine "allows appellate courts to review errors that were otherwise forfeited by a party's failure to object." ***State v. Miller***, 2012 WI App 68, ¶18, 341 Wis. 2d 737, 816 N.W.2d 331. In this case, there is no unobjected to error that Lewis's counsel forfeited or waived. Instead, Lewis is simply challenging the circuit court's credibility determinations. As stated previously, we review credibility determinations under the clearly erroneous standard. ***Thiel***, 264 Wis. 2d 571, ¶¶21, 23.

The circuit court found trial counsel and his explanation that he was mistaken when he referenced a surveillance video at the 2013 ***Machner*** hearing credible and supported by the record. Additionally, the court found that Lewis's statement that he pled to the amended charge because counsel had advised him a video depicting the shooting undermined his self-defense assertion to be not credible. The court observed, in part, that Lewis never raised the issue of the surveillance video until after counsel made the 2013 reference. Credibility determinations and

the weight given to the evidence is strictly within the province of the factfinder. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990) ("It is the function of the trier of fact, and not of an appellate court, to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."). We conclude the circuit court's findings are not clearly erroneous.

Because Lewis failed to establish that, before he pled to the amended charge, counsel advised him of a surveillance video that did not support his self-defense claims, it follows that Lewis failed to establish counsel performed deficiently. *See* ***Strickland***, 466 U.S. at 687. The circuit court appropriately denied his plea withdrawal motion. Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* 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