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DISTRICT I

November 4, 2025

To:

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

2024AP1084-CR State of Wisconsin v. Marvin Lloyd Millner (L.C. # 2022CF4225)

Before White, C.J., Colón, P.J., and Geenen, J.

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).

Marvin Lloyd Millner appeals a judgment of conviction entered after he pled guilty to two crimes: felony murder, with an underlying offense of misdemeanor battery as a party to a crime; and taking a vehicle without the owner's consent by use or threat of force (carjacking). He also appeals an order denying his postconviction motion either to dismiss the felony murder charge or, alternatively, to withdraw his guilty plea to that charge. As in the postconviction proceedings, Millner's arguments on appeal focus exclusively on claims for relief from the felony murder conviction. Based upon a review of the briefs and record, we conclude at conference that this

matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] We summarily affirm.

The criminal complaint in this matter alleged that on October 25, 2022, police responded to allegations of a battery at a Milwaukee gas station and its connected convenience store in the 2000 block of South Chase Avenue. Rodney Surprise was unconscious at the scene, and he was subsequently pronounced dead at the hospital. An autopsy determined that the cause of death was multiple blunt force injuries.

Surveillance video showed three people confronting and then assaulting Surprise after he parked and exited his car at the gas station. One of those people, later identified as Millner, was carrying a blue backpack. In the video, Millner initially blocked Surprise as he attempted to return to his car. A second person, Terry Johnson, restrained Surprise while a third person, referred to as "Assailant 3," repeatedly punched Surprise, who fell to the ground. The video recorded the three assailants then dragging Surprise along the ground, after which Millner and Assailant 3 could be seen rifling through Surprise's pockets. Assailant 3 then punched Surprise several more times. While Surprise remained on the ground, Millner got into the driver's seat of Surprise's car and started the engine. Surprise crawled to the car and grabbed Millner, who partially rose out of the driver's seat and "hurl[ed Surprise] to the pavement." Surprise fell backwards, his body went limp, and "he never move[d] again."

[1] Although the charges against Millner arose when the 2021-22 version of the Wisconsin Statutes was in effect, subsequent statutory revisions did not affect the parts of the statutes that are relevant to the discussion in this opinion. Accordingly. all references to the Wisconsin Statutes are to the 2023-24 version.

The complaint further reflects that police interviewed Millner. He admitted that he was the man seen in the video carrying the blue backpack, and he admitted taking Surprise's keys and driving away from the gas station in Surprise's car. The State charged Millner with three crimes: felony murder, predicated on misdemeanor battery as a party to a crime; robbery as a party to a crime; and carjacking.

Millner elected to resolve the case with a plea agreement. Pursuant to its terms, he pled guilty as charged to felony murder and carjacking, and the remaining charge was dismissed and read in. The circuit court imposed an aggregate 27-year term of imprisonment.

Following sentencing, Millner moved for postconviction relief from the felony murder conviction. He alleged that felony murder predicated on misdemeanor battery is not a crime known to law because felony murder can only be charged in connection with the commission or attempt of another crime that is charged as a felony. Therefore, Millner argued, the circuit court lacked jurisdiction as to the felony murder charge, requiring its dismissal. *See* ***State v. Christensen***, 110 Wis. 2d 538, 542, 329 N.W.2d 382 (1983) (holding that "[w]here the offense charged does not exist, the [circuit] court lacks jurisdiction"). Alternatively, Millner sought to withdraw his guilty plea to felony murder on the ground that the plea lacked a factual basis. The circuit court denied the postconviction motion without a hearing, and Millner appeals.

In this court, Millner renews his claim for dismissal of the felony murder charge, asserting that the State did not allege a crime that exists in Wisconsin. Millner's argument is premised on a theory that causing a death while committing or attempting to commit a misdemeanor cannot constitute felony murder under WIS. STAT. § 940.03. Millner's premise is belied by the plain language of § 940.03.

The purpose of statutory interpretation is to determine the meaning of the statute at issue and to give the statute its full, proper, and intended effect. ***State v. Schmidt***, 2021 WI 65, ¶50, 397 Wis. 2d 758, 960 N.W.2d 888. Statutory interpretation begins with the language of the statute. ***Id.*** If the statutory language is plain and unambiguous, a court's inquiry ends, and "there is no need to consult extrinsic sources of interpretation." ***State ex rel. Kalal v. Circuit Ct. for Dane Cnty.***, 2004 WI 58, ¶¶45, 46, 271 Wis. 2d 633, 681 N.W.2d 110.

WISCONSIN STAT. § 940.03, titled "felony murder," prohibits a person from causing "the death of another human being while committing or attempting to commit a crime specified in [WIS. STAT. §] 940.19," among other listed statutes. The word "crime" in § 940.03, is statutorily defined as "conduct which is prohibited by state law and punishable by fine or imprisonment or both." WIS. STAT. §§ 939.01, 939.12. Section 940.19 prohibits battery and provides that a person who violates § 940.19(1) commits a Class A misdemeanor. Class A misdemeanors are punishable by nine months in jail, a $10,000 fine, or both. WIS. STAT. § 939.51(3)(a). Accordingly, the language of § 940.03 is plain and unambiguous. It provides that a person commits felony murder by causing a death while committing, *inter alia*, a misdemeanor battery specified in § 940.19(1).

Notwithstanding the plain text of WIS. STAT. § 940.03, Millner contends that the statute's title renders the statutory language ambiguous. In his view, a statute titled "felony murder" must be limited in application to circumstances where a death occurred while the defendant was committing a felony. A statute's title, however, is not part of the statute itself. ***State v. Lopez***, 2019 WI 101, ¶26, 389 Wis. 2d 156, 936 N.W.2d 125. A title may serve as an interpretative aid in understanding ambiguous statutory language but, like other interpretative tools, titles "cannot undo or limit that which the text makes plain." ***Id.***, ¶27 (citations omitted). Because the text is

plain here, interpretative aids are not required. The statutory text unambiguously shows that Millner was charged with a crime described in § 940.03.

Before we leave this issue, we address Millner's assertion that the Wisconsin Criminal Jury Instructions Committee perceives an ambiguity in the language of WIS. STAT. § 940.03. In support, Millner points to the comment that follows the felony murder jury instruction: "the offenses added by [2005 legislation] include two offenses that define misdemeanor offenses: [WIS. STAT. §] 940.19(1) and [WIS. STAT. §] 940.195(1). It is not clear whether the application of the revised felony murder statute was intended to be based on the commission of a misdemeanor." WIS JI—CRIMINAL 1030, cmt.

Were we to agree with Millner that the Wisconsin Criminal Jury Instructions Committee views WIS. STAT. § 940.03 as ambiguous, that would not change our analysis or affect our conclusion. The work of the Committee is invaluable but not infallible. ***State v. Beets***, 124 Wis. 2d 372, 383 n.7, 369 N.W.2d 382 (1985).

In this case, however, we do not agree with Millner that the Wisconsin Criminal Jury Instructions Committee views WIS. STAT. § 940.03 as ambiguous. Rather, the Committee's comment acknowledges that the statutory language clearly includes misdemeanor offenses as predicate crimes for felony murder. While the Committee goes on to question whether that language correctly reflects the intent of the legislature, we see no reason for this court to speculate about legislative intent. "If the statute is clear on its face, our inquiry into the legislative intent ends[.]" ***Pool v. City of Sheboygan***, 2006 WI App 122, ¶8, 293 Wis. 2d 725, 719 N.W.2d 792.

In sum, the charge of felony murder that Millner faced was a crime known to Wisconsin law: the State alleged that Millner violated WIS. STAT. § 940.03 because, as a party to a crime, he

committed a battery prohibited by WIS. STAT. § 940.19(1), and the victim died as a result.[2] The circuit court therefore properly denied his motion to dismiss the felony murder charge for lack of jurisdiction.

We turn to Millner's second claim for relief. According to Millner, he was entitled to withdraw his guilty plea to the charge of felony murder because the circuit court did not establish a factual basis for his plea. The circuit court properly rejected this claim.

Pursuant to WIS. STAT. § 971.08(1)(b), a circuit court accepting a guilty plea must make "such inquiry as satisfies 'it'—meaning the circuit court—'that the defendant in fact committed the crime charged.'" ***State v. Black***, 2001 WI 31, ¶12, 242 Wis. 2d 126, 624 N.W.2d 363 (citation omitted). The circuit court may fulfill this obligation as the circuit court "sees fit, as long as the judge guarantees that the defendant is aware of the elements of the crime, and the defendant's conduct meets those elements." ***Id.*** (citation omitted). Moreover, "a factual basis for a plea exists if an inculpatory inference can be drawn from the complaint or facts admitted to by the defendant[.]" ***Id.***, ¶16.

Here, as ***Black*** requires, the circuit court ensured that Millner was aware of the elements of felony murder. Millner confirmed during the plea colloquy that he understood the elements and

[2] The criminal complaint and the later information both alleged that the crime underlying the felony murder charge was battery as a party to a crime, although neither charging document cited WIS. STAT. § 939.05, the party-to-a-crime statute, when describing the charge. Such a citation is not mandatory and the omission of the citation does not undermine the allegation of party-to-a-crime liability, particularly where the complaint "spelled out" a party-to-a-crime theory. ***State v. Charbarneau***, 82 Wis. 2d 644, 648, 264 N.W.2d 227 (1978).

that he had reviewed those elements with his counsel.[3] The circuit court then asked whether it could rely on the facts in the criminal complaint to establish a factual basis for Millner's plea, and both attorneys agreed that the court could do so. As we have more particularly described above, the complaint alleged that Millner and his co-actors cornered Surprise, punched him, and dragged him along the ground; that Millner next got into Surprise's car; and that when Surprise attempted to stop the theft of his car, Millner "hurl[ed Surprise] to the pavement." The complaint alleged that Surprise never moved again, and that he died "as a result of blunt force trauma."

Millner nonetheless contends that the circuit court did not establish a factual basis for felony murder because, he says, the complaint did not permit the circuit court to infer that he committed each element of the predicate battery crime. Specifically, Millner asserts that the complaint does not permit either an inference that he caused bodily harm to Surprise "beyond that previously caused by Assailant 3," or an inference that Millner acted with intent to cause bodily harm to Surprise. *See* WIS. STAT. § 940.19(1); WIS JI—CRIMINAL 1220. These assertions are meritless.

[3] As relevant here, the elements of felony murder are: (1) the defendant committed a crime identified in WIS. STAT. § 940.03; and (2) the victim's death was caused by the commission of that crime. WIS JI—CRIMINAL 1030. Additionally, the first element of felony murder requires that the defendant committed one of the predicate crimes listed in § 940.03. ***State v. Krawczyk***, 2003 WI App 6, ¶26, 259 Wis. 2d 843, 657 N.W.2d 77; WIS. JI—CRIMINAL 1030. The underlying crime here was misdemeanor battery as a party to a crime. *See* WIS. STAT. §§ 940.19(1), 939.05. The elements of misdemeanor battery in violation of § 940.19(1) are: (1) the defendant caused bodily harm to the victim; (2) the defendant intended to cause bodily harm; (3) the victim did not consent to the harm; and (4) the defendant knew the victim did not consent. WIS JI—CRIMINAL 1220. A defendant commits an offense as a party to a crime if the defendant committed the crime directly; or intentionally aided and abetted the person who committed it; or conspired with another to commit it. WIS. STAT. § 939.05; WIS JI—CRIMINAL 402.

For obvious reasons, the allegation that Millner hurled Surprise to the pavement supports an inference that Millner contributed directly to the blunt force trauma that killed Surprise. Moreover, the complaint alleged that Millner's co-actors punched Surprise and dragged him along the ground and that Millner assisted them in committing these acts. Therefore, as Millner expressly conceded in his postconviction motion, "the complaint certainly provided a basis to establish party to a crime liability, given that Millner aided and abetted Johnson and Assailant 3."[4] As to the element of intent to cause bodily harm, Millner argues that "there is no indication" that he had such an intent, and in fact "he was trying to fend the victim off so [Millner] could take [Surprise's] car." In assessing intent, however, the circuit court could draw conclusions from Millner's actions. "Criminal intent ... is nearly always proved circumstantially, by inference from the actor's conduct." ***State v. Payette***, 2008 WI App 106, ¶23, 313 Wis. 2d 39, 756 N.W.2d 423 (citation omitted). The conduct alleged here provided an ample factual basis to infer that Millner intended to physically harm Surprise. For all the foregoing reasons, we affirm.

IT IS ORDERED that the judgment of conviction and the postconviction order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

[4] Notwithstanding Millner's concession in the circuit court proceedings, Millner asserts in his reply brief here that "[t]his is not a [p]arty-to-a-[c]rime [c]ase" because he pleaded guilty to felony murder as a principle. In support, he states that "the plea questionnaire form made no reference that Millner was pleading to felony murder as a party to a crime"; and that the judgment of conviction "makes no mention of any [WIS. STAT.] § 939.05 party to a crime modifier." We need not consider arguments first presented to us in a reply brief. ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998). We nonetheless observe that Millner's arguments suggest that he has confused his substantive crime with its predicate offense. The State did not charge Millner as a party to the crime of felony murder. Rather, the State alleged that Millner committed the predicate offense of battery as a party to a crime, an allegation that he expressly admitted during the plea colloquy. As to Millner's observations about the text of his judgment of conviction, we remind him that when a defendant commits felony murder, the predicate offense is a lesser-included crime. ***Krawczyk***, 259 Wis. 2d 843, ¶26. Accordingly, that predicate offense does not appear on Millner's judgment of conviction. *See* WIS. STAT. § 939.66 (providing that an "actor may be convicted of either the crime charged or an included crime, but not both").

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

Samuel A. Christensen
Clerk of Court of Appeals