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DISTRICT II

December 10, 2025

To:

Hon. Robert S. Repischak
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Brian Patrick Mullins
Electronic Notice

Jacob J. Wittwer
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1079-CR State of Wisconsin v. Jacques L. Pissard (L.C. #2020CF416)

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).

Jacques L. Pissard appeals from a judgment of conviction and order denying postconviction relief, in which the circuit court denied Pissard's ineffective assistance of counsel claim after an evidentiary hearing on the grounds that there was no prejudice. 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] Because Pissard fails to establish prejudice, we affirm.

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

In April 2020, Pissard was charged with attempted first-degree intentional homicide by use of a dangerous weapon, as a repeat offender and a repeat felony domestic abuse offender. The complaint alleged that Pissard had stabbed his live-in girlfriend, Daniella,[2] in her neck, abdomen, and arms with a kitchen knife.

In April 2020, a female in Racine called 911, but the call was almost immediately disconnected. The dispatcher attempted to re-establish contact multiple times, during which there were sounds of distress before the call would disconnect. Eventually, the dispatcher was able to re-establish connection with a male who identified himself as Pissard and the female party as Daniella.

During the October 2021 jury trial, Daniella testified that Pissard stabbed her; she did not remember what caused Pissard to stab her, but that when she went to the refrigerator, he simply grabbed her and started stabbing her in the chest. She also testified that during the stabbing, she put up her left arm saying, "[b]abe, stop, you're going to kill me." Daniella also testified that she had used a steak knife earlier in the night but that she had not attempted to stab Pissard and had not handled the chef's knife that Pissard used against her later in the night. Pissard was found outside with a significant amount of blood on his arms and T-shirt. When asked what had happened, Pissard responded that he "killed the bitch." Officer Jacob Lofy testified that he handcuffed Pissard and entered the residence where he found Daniella lying in a pool of blood with a chef's knife next to her. Officer Heriberto Benitez, who was also at the scene, testified

[2] To protect the identity of the victim, we use a pseudonym. *See* WIS. STAT. RULES 809.19(1)(g) and 809.86(4).

that, while walking Pissard down the stairs, Pissard again stated, "I killed the bitch." During a search of Pissard's person, Officer Benitez saw a cut across Pissard's hand and fingers.

Investigators interviewed Pissard as part of their investigation. At trial, the State played various portions of that video recording. At one point, Pissard claimed that Daniella had come at him with the kitchen knife and that he had grabbed the blade with his left hand, transferred it to his right hand, and attacked Daniella. Pissard also said that when Daniella went to stab him that something clicked in his brain, and he thought, "I'm going to kill this fucking bitch" and "you going to try'n take my life? No bitch, I'm go'in to take your motherfuck'n life." Following the playing of this excerpt of the video-recorded interview, the State asked Investigator Stephen Mueller "[w]hat does that tell you as an investigator?" Mueller testified that "[i]t tells me that he's obviously angry with her and he's trying to hurt or harm or kill her. The whole grab the knife is just - - I don't know what to say about that."

In another portion of the video recording, Pissard shook his head no when asked if he tried to help Daniella, explaining "she was already call'n the cops," and "I have no idea what happened, it was all a blur." In another excerpt played to the jury, Pissard admitted that he had stabbed Daniella while she was lying on the floor. When asked if she was standing up when he initially stabbed her, Pissard responded by shaking his head no and stating, "no, I knocked her ass down when I grabbed the knife."

At trial, Investigator Mueller testified about what he learned from these portions of the interview:

> when [Pissard] says he grabs … the weapon away from her, she no longer has a weapon, and now here he's saying that he pushed her to the ground and stabbed her. When a person's down on the

> ground, they're not really a threat, and that he's stabbing somebody that's laying on the ground.
>
> ….
>
> … He removed the weapon from her, and he stabbed her while she was down on the ground not being a threat.

When Mueller was asked if he "believe[d] that based on this interview [he] had basically, for lack of a better term, solved [his] case[,]" he said, "[y]es."

At the end of the trial, the court agreed to instruct the jury on imperfect self-defense. The jury found Pissard guilty of attempted first-degree intentional homicide with a dangerous weapon, and the court sentenced Pissard to 40 years of initial confinement and 20 years of extended supervision.

Pissard filed a postconviction motion requesting a new trial, alleging ineffective assistance of counsel on the basis that his trial counsel had failed to object to impermissible opinion testimony given by Mueller. First, Pissard claimed that defense counsel should have objected to Mueller's statement, "[t]he whole grab the knife is just - I don't know what to say about that." He claimed that this statement implied that his version of events was "absurd" and did not deserve serious consideration. Second, Pissard asserted that Mueller's statements, "[w]hen a person's down on the ground, they're not really a threat, and that he's stabbing somebody that's laying on the ground" and "he stabbed her while she was down on the ground not being a threat" constitute an opinion on the ultimate issue of whether Pissard acted in self-defense, and therefore defense counsel should have objected. Finally, Pissard claimed the State's question regarding whether Mueller had "'solved' [the] case" after the interview was irrelevant to the ultimate issue of whether Pissard acted in self-defense, and therefore defense

counsel should have objected. Pissard argued that the defense counsel's deficient performance prejudiced him because the improper testimony undermined his self-defense claim.

The trial court held an evidentiary hearing on Pissard's motion and concluded that defense counsel did not have a professional duty to object to the investigator's statement of "I don't know what to say about that" on the grounds that the comment was too vague and incomplete to constitute an opinion about Pissard's credibility. Regarding the investigator's statements about Daniella being on the floor when Pissard stabbed her, the court determined that counsel's failure to object was deficient performance because the testimony was not admissible since it was not helpful to a determination of a fact at issue. *See* WIS. STAT. § 907.01(2). The court, however, concluded there was no prejudice because the evidence supporting Pissard's guilt was "substantial," and the fact that on cross-examination the investigator admitted that Pissard gave two versions of the victim's position undermined any effect that his opinion testimony had on the jury about Daniella's threat level status. Finally, the court concluded that the State's question about whether the investigator had "solved [the] case" after the interview was neither deficient nor prejudicial.

Pissard asks this court to review the trial court's denial of his ineffective assistance of counsel claim. Whether a defendant has been deprived of effective assistance of counsel presents a mixed question of law and fact. ***State v. Mayo***, 2007 WI 78, ¶32, 301 Wis. 2d 642, 734 N.W.2d 115. The court's findings of fact are upheld unless clearly erroneous. ***Id.*** This court decides de novo whether those facts constitute deficient performance and prejudice. ***Id.***

In order for Pissard to prove ineffective assistance of counsel, he must prove both prongs of the analysis: that his counsel's performance was deficient and that the deficient performance

prejudiced the defense. ***State v. Burton***, 2013 WI 61, ¶47, 349 Wis. 2d 1, 832 N.W.2d 611. "[T]he proper standard for attorney performance is that of reasonably effective assistance by a reasonably competent attorney." ***Id.***, ¶48 (citation omitted). The court strongly presumes that counsel has rendered adequate assistance. ***Id.*** To establish prejudice, Pissard must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.***, ¶49 (citation omitted). "[R]easonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** (citation omitted).

Lay witnesses may testify "in the form of opinions or inferences" only if (1) the testimony is "[r]ationally based on the perception of the witness;" (2) the testimony is "[h]elpful to a clear understanding of the witness's testimony or the determination of a fact in issue;" and (3) the testimony is "[n]ot based on scientific, technical, or other specialized knowledge[.]" WIS. STAT. § 907.01. An opinion regarding whether a witness is credible is inadmissible because "[t]he jury is the lie detector in the courtroom." ***State v. Haseltine***, 120 Wis. 2d 92, 96, 352 N.W.2d 673 (Ct. App. 1984) (citation omitted). Therefore a "witness may not testify that another mentally and physically competent witness is telling the truth." ***State v. Jensen***, 147 Wis. 2d 240, 249, 432 N.W.2d 913 (1988) (citation omitted). Additionally, an opinion or inference that is otherwise admissible "is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." WIS. STAT. § 907.04.

The trial court correctly determined that defense counsel's failure to object to both Mueller's statement of "I don't know what to say about that" and whether the interview had "solved [the] case" was neither deficient performance nor prejudicial to Pissard. The first statement was too vague and incomplete to constitute an opinion. Defense counsel acknowledged that Mueller never completed the statement and that the defense's strategy was to

address the events that transpired through interrogating the investigator. Given the Record, that decision was reasonable and within an attorney's acceptable range of professional conduct. *See* ***Strickland***, 466 U.S. at 690 ("[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable[.]"); ***State v. Jenkins***, 2014 WI 59, ¶36, 355 Wis. 2d 180, 848 N.W.2d 786 (stating courts should be highly deferential when reviewing counsel's performance and avoid "the distorting effects of hindsight").

Next, Mueller's agreement that the interview had basically "solved [the] case" was not an opinion that Pissard should be found guilty at trial; it did not address that ultimate issue. Rather, it was an explanation of why law enforcement decided to pursue charges against Pissard and was relevant in setting the context of their investigation and the case in general. *See* ***State v. Shillcutt***, 116 Wis. 2d 227, 236-37, 341 N.W.2d 716 (Ct. App. 1983) (explaining that some evidence is necessary to understand a case's context). There was no basis to object to this portion of Mueller's testimony.

Finally, we conclude that Mueller's statement regarding Daniella's threat level status could constitute an inadmissible lay opinion under WIS. STAT. § 907.04, and that defense counsel's failure to object could be deficient performance. Pissard, however, cannot show prejudice resulting from this deficient performance because his own statements made during his interview undermine his claim for imperfect self-defense. Nowhere in Pissard's version of events does it show that Daniella still posed a threat of great bodily harm to Pissard when he stabbed her. By the time Pissard was stabbing Daniella, he had already taken the knife away from her and neutralized any threat. Furthermore, Pissard's statements during the interview do not demonstrate that he was acting in any way to protect himself from Daniella. Rather, they show that he was enraged with Daniella for the alleged attempt on his life.

Pissard never told the 911 operator, after they re-established contact, that Daniella had allegedly tried to stab him. Nor did he tell either officer on the scene. In fact, Pissard did not mention the alleged attempt until the next day. These facts undermine Pissard's imperfect self-defense claim and make it a reasonable probability that the jury would have still returned with the same verdict regardless of counsel's deficient performance. Because Pissard has failed to establish prejudice, his ineffective assistance of counsel motion was properly denied.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are 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