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**DISTRICT I**

March 10, 2026

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

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2024AP1338-CR

State of Wisconsin v. Rilo Devonte Spears (L.C. # 2016CF3133)

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).**

Rilo Devonte Spears appeals his judgment of conviction for first-degree reckless homicide, and the order denying his postconviction motion alleging ineffective assistance by his trial counsel. 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).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

Spears was charged in the July 2016 shooting death of John Garrett at a residence on North 7th Street in Milwaukee. When responding officers arrived, Garrett was laying face down in the yard, with no pulse, suffering from multiple gunshot wounds. Lifesaving attempts were unsuccessful.

Officers spoke with Garrett's wife, Cynthia, who stated that the shooting occurred during an altercation with their neighbors, the Armstrong family. Two men who were relatives of the Armstrongs—one of them Spears—arrived at the scene during the altercation with a gun. Garrett's daughter, as well as two members of the Armstrong family, identified Spears as the person who shot Garrett. Spears had left the scene before police arrived, but was later arrested and charged with first-degree reckless homicide.

The matter proceeded to trial in February 2017. On the first day of trial, Spears appeared in court dressed in his jail uniform. The circuit court asked if he had any street clothes to change into for trial. Spears' trial counsel responded that he did not, but that they were "fine" with him appearing in his jail uniform, and that they had discussed it over the weekend; Spears confirmed that he wanted to wear the jail uniform. The court stated that it was Spears' prerogative, but explained that seeing that a defendant is in custody may have a negative impact on the jury. That afternoon, the court further addressed the issue with Spears, who again stated that he wanted to wear his jail uniform. The court then offered to give a curative instruction to the jury that Spears' clothing was not to influence its decision.

Each day of the trial, the circuit court checked with Spears about his clothing choice. It continued to explain the risks involved with the jury seeing him in his jail uniform. Spears continued to state that he wished to wear his jail uniform.

During the trial, the jury heard testimony from several members of the Armstrong family. Tonya Armstrong testified that there had been recurring “issues” between her sons and the Garretts’ son during that summer. On the night of the shooting, John and Cynthia Garrett, as well as Tonya, had gotten involved in the argument. Tonya testified that her brother, Dominique Armstrong, and her cousin, Spears, arrived at the residence during the altercation. Tonya then saw Spears fire “four or five” shots at John Garrett.

One of Tonya’s sons, Davonte Armstrong, also testified that Spears was the shooter. He stated that his younger brother, Dasari Armstrong, had called Dominique to the scene. Davonte testified that he thought Dominique and Spears were going to “talk to” or “fight” John Garrett, and he was surprised when Spears shot John Garrett.

Dasari Armstrong also testified—reluctantly—against Spears. Dasari confirmed that he had called Dominique during the altercation. Dasari claimed that he did not see Spears shoot John Garrett; however, the State introduced Dasari’s statement to police from the night of the shooting, in which Dasari identified Spears as the shooter.

Cynthia Garrett also testified about seeing her husband shot. She could not identify the shooter, but stated it was the shorter of the two men who had come to the scene. Booking photos of Spears and Dominique Armstrong indicate that Spears’ height is 5’6” and Armstrong’s height is 6’2”.

Also testifying for the State was Ikima Cooper, the mother of Spears’ child. Cooper testified that Spears texted her a couple of hours after the shooting, stating “I’m fitting to go to jail for the rest of my life.” Cooper responded, “What you do?” and Spears replied “Shot somebody.”

The defense called a few witnesses, including Spears' grandmother, Andrea Armstrong. After her testimony, in which she discussed Spears' arrest, Spears became very upset. The circuit court explained on the record that he seemed to express some frustration with trial counsel. He then stood up, pushed his chair over while yelling about his grandmother and shouting expletives. He had to be taken down by the bailiffs. All of this occurred in front of the jury.

Spears' trial counsel explained that Spears was upset over the State's questioning of his grandmother, and with the trial in general. The circuit court noted that the outburst seemed to be more of a "boiling over" of Spears' emotions rather than an attempt at violence, and that there did not appear to be any direct threats made by Spears toward anyone in the courtroom. The court therefore determined that a mistrial was not appropriate. Nevertheless, Spears was placed in a wheelchair with a stun belt for the remainder of the trial. The court explained to the jury that Spears was not injured, but was in the wheelchair as an "additional security measure." The defense did not object.

Spears also testified in his own defense. He stated that Dominique Armstrong shot John Garrett.

The jury found Spears guilty as charged. The circuit court imposed a sentence of 50 years, bifurcated as 33 years of initial incarceration and 17 years of extended supervision.

Spears filed a postconviction motion claiming ineffective assistance of his trial counsel. Specifically, Spears argued that his trial counsel, James Goldmann, was ineffective for: (1) advising him to wear his jail uniform at trial; (2) failing to preserve an objection on the record to Spears being restrained in the wheelchair after his outburst; and (3) failing to call three

witnesses who purportedly would have testified that Dominique Armstrong was the shooter. Spears subsequently filed a supplemental memorandum to the postconviction motion in which he argued that Goldmann was facing disciplinary action at the time he was representing Spears, and his performance should be presumed to be ineffective.<sup>2</sup> Spears also asserted that the deficiencies in Goldmann's performance created cumulative prejudice to his defense.

A *Machner* hearing was held in March 2024. Goldmann and Spears both testified, along with Attorney Pamela Moorshead, who testified regarding her discussions with Goldmann during the time she was representing Spears as his appointed postconviction counsel.

The circuit court made its findings from the hearing in an oral ruling in June 2024. The court first rejected the claim based on Spears wearing his jail uniform at trial. It noted its repeated discussions with Spears during the trial regarding that decision, ultimately finding that the decision was “free, voluntary, and intelligent” because Spears was made aware of the potential risks, and the court had allowed him multiple chances to change his mind.

Nevertheless, Spears claimed that Goldmann had advised him to wear the uniform, which he asserted constitutes ineffective assistance of counsel. Indeed, Goldmann testified that he thought it would make Spears look “sympathetic” to the jury. The court found this to be a strategic decision, albeit perhaps an “unwise” strategy. As a result, the court determined this could not be construed as deficient performance, and even if it could, there was no prejudice due to the court's curative instruction to the jury regarding Spears' clothing.

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<sup>2</sup> After the postconviction motion was filed, Spears discharged his appointed postconviction counsel, Attorney Pamela Moorshead, and retained his current postconviction counsel, who filed the supplemental memorandum and represented him at the *Machner* hearing on the motion. See *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

With regard to Goldmann's failure to place an objection on the record to Spears' restraints after his outburst, the circuit court found it would have been denied. The court stated the steps taken were the "appropriate minimal steps" to ensure the safety of everyone in the courtroom. The court therefore did not find the failure to object to be deficient performance. It further found there was no prejudice due to the curative instruction provided to the jury, and because the restraints were due to Spears' own conduct.

The circuit court also rejected Spears' claim relating to Goldmann's failure to call the three witnesses who would have identified a different shooter. The court noted that none of those witnesses testified at the *Machner* hearing, so it did not know what their testimony would have been. As such, the court could infer by their absence that postconviction counsel was unable to locate them or they were unwilling to testify. Furthermore, Goldmann testified that two of those witnesses would have actually implicated Spears as the shooter, which the court found to be a strategic reason not to call them.

Regarding the argument in Spears' supplemental memorandum relating to the disciplinary action against Goldmann, the circuit court rejected that as well. The court stated that the evidence from the *Machner* hearing did not establish that Goldmann was facing, or was aware that he would be facing, disciplinary action at the time he represented Spears.<sup>3</sup> The court therefore found no connection between the disciplinary action and the "substance" of Goldmann's representation of Spears. The court also rejected Spears' claim that Goldmann's

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<sup>3</sup> Goldmann testified that his law license was revoked in July 2018, after a number of complaints were lodged against him between 2015 and 2017.

alleged errors created cumulative prejudice, observing that it had found no deficient performance or prejudice for any of Spears' ineffective assistance claims.

As a result, the circuit court denied Spears' postconviction motion.<sup>4</sup> This appeal follows.

Our analysis of an ineffective assistance of counsel claim involves the familiar two-pronged test: the defendant must show that his trial counsel's performance was deficient and that the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The circuit court's findings of fact, "the underlying findings of what happened," will not be overturned unless clearly erroneous, but the "ultimate determination of whether counsel's performance was deficient and prejudicial to the defense" are questions of law which this court reviews independently. *State v. Johnson*, 153 Wis. 2d 121, 127-28, 449 N.W.2d 845 (1990) (citation omitted).

To prove that counsel was constitutionally deficient, the defendant "must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. To prove prejudice, the defendant must establish "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. The court need not address both prongs of the test if the defendant "cannot make a sufficient showing" on one. *State v. Mayo*, 2007 WI 78, ¶61, 301 Wis. 2d 642, 734 N.W.2d 115.

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<sup>4</sup> The circuit court noted that Spears had made other claims in his initial postconviction motion, but that those claims had "fallen away" with the supplemental filing, and thus were not addressed. We observe that the claims discussed and resolved by the circuit court are the only claims raised and argued by Spears on appeal.

We first address the claim regarding Spears wearing his jail uniform during the trial. At the *Machner* hearing, Goldmann denied advising Spears to do so. However, Goldmann testified that he thought there were “positives” to wearing the jail uniform, such as portraying Spears as a “sympathetic figure” who was “suffering” in jail even though the evidence—as they saw it—pointed to Dominique Armstrong as the shooter.

Generally, trial strategy decisions, “even those appearing unwise in hindsight,” will not be deemed to be ineffective assistance of counsel as long as they are “reasonably founded on the facts and law under the circumstances existing at the time the decision was made.” *State v. Smith*, 2016 WI App 8, ¶14, 366 Wis. 2d 613, 874 N.W.2d 610 (citation omitted). During the circuit court’s oral decision after the *Machner* hearing, postconviction counsel pressed the court about Goldmann’s suggestion that Spears wear his jail uniform for trial, arguing it was not a reasonable strategy. The court acknowledged that it may not have been a “good” strategy, but that it ultimately did not make a difference in its decision because the record supported that Spears had made the decision freely. Furthermore, the court provided a curative instruction to the jury to not consider Spears’ clothing further, and “[j]urors are presumed to have followed jury instructions.” *State v. LaCount*, 2008 WI 59, ¶23, 310 Wis. 2d 85, 750 N.W.2d 780.

Postconviction counsel also argued that if Goldmann’s strategy regarding the jail uniform was to demonstrate a “dichotomy” between Spears and Dominique Armstrong, this strategy could not be considered reasonable because Dominique was not called as a witness. However, even if this strategy does constitute deficient performance, Spears has not demonstrated prejudice. The jury heard the defense’s theory of the case contending that Dominique was the shooter. Spears testified as such, and Goldmann’s cross examination of the witnesses to the shooting reflected that theory. The credibility of the witnesses and any conflicts in the evidence are for the jury to

determine and resolve, *see State v. Pankow*, 144 Wis. 2d 23, 30-31, 422 N.W.2d 913 (Ct. App. 1988), and the verdict reflects that the jury believed the evidence showed that Spears was the shooter.

A defendant cannot establish prejudice “by simply showing that an error had some conceivable effect on the outcome.” *State v. Koller*, 2001 WI App 253, ¶9, 248 Wis. 2d 259, 635 N.W.2d 838, *holding modified by State v. Schaefer*, 2003 WI App 164, ¶4, 266 Wis. 2d 719, 668 N.W.2d 760. Rather, there must be a “reasonable probability” that the outcome would have been different. *Strickland*, 466 U.S. at 694. Spears fails to demonstrate that Goldmann’s advice about wearing his jail uniform at trial actually had an effect on the outcome of the trial. *See id.* Therefore, this claim fails.

We next turn to Spears’ claim that Goldmann was ineffective for failing to preserve an objection on the record to Spears being restrained in a wheelchair after his outburst in court. Goldmann conceded at the *Machner* hearing that while he had objected, it was during an off-the-record discussion among the parties and the circuit court. However, the circuit court stated in its oral decision that a further objection on the record would have been overruled, since the wheelchair represented “appropriate minimal steps” for courtroom safety.

Goldmann testified that he did not further pursue an objection on the record because he was already aware of the circuit court’s decision on the matter. Indeed, we will generally not find deficient performance when an attorney “fail[s] to make a losing argument.” *State v. Jacobsen*, 2014 WI App 13, ¶49, 352 Wis. 2d 409, 842 N.W.2d 365. Furthermore, the circuit court provided a curative instruction to the jury regarding the restraints, which the jurors are

presumed to have followed. See *LaCount*, 310 Wis. 2d 85, ¶23. Therefore, Spears has failed to establish prejudice from the alleged error, and this claim fails. See *Strickland*, 466 U.S. at 694.

Next, we address Spears' claim that Goldmann was ineffective for failing to call three witnesses that he alleges would have pointed to Dominique Armstrong as the shooter. There was conflicting testimony between Goldmann and Attorney Moorshead as to whether Goldmann had contacted these witnesses, and what the substance of those conversations was; that is, whether the witnesses would have supported the defense's theory that Dominique was the shooter. However, as noted above, none of these witnesses testified at the *Machner* hearing, so there is nothing in the record to establish what their testimony would have been. We therefore conclude that Spears has not established that Goldmann was ineffective for failing to call them. See *Jandrt v. State*, 43 Wis. 2d 497, 506, 168 N.W.2d 602 (1969) (explaining that any conclusion that witnesses did not testify due to counsel's incompetency is "mere speculation" when the record does not show that the witnesses were available and would have supported the defendant's position).

Spears also renews his argument that the revocation of Goldmann's license to practice law after Spears' trial rendered Goldmann "unfit" to represent Spears. However, Spears provides no legal support for this argument. Arguments that are "unsupported by references to legal authority" will generally not be considered. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). To the extent that Spears may be arguing that the disciplinary action against Goldmann renders his testimony at the *Machner* hearing incredible, we observe that the circuit court made credibility findings regarding Goldmann's testimony, and we defer to those credibility determinations. See *State v. Artic*, 2009 WI App 12, ¶20, 316 Wis. 2d 133, 762 N.W.2d 436. Specifically, the circuit court found that while Goldmann losing his law license

undermines his credibility simply because “that doesn’t speak well for anybody’s character,” his testimony was “otherwise fine.”

In addition to our analysis of Spears’ ineffective assistance claims individually, we further conclude that he has not demonstrated that his defense was prejudiced by the alleged errors by Goldmann due to the plethora of other evidence against him. In our review of an ineffective assistance claim, this court is to consider the “totality of the evidence” that was before the jury. *Johnson*, 153 Wis. 2d at 129-30. Here, the State presented several witnesses who testified that Spears was the shooter, not Dominique Armstrong. The jury also heard testimony about a text message in which Spears confessed to being the shooter. The evidence presented at the *Machner* hearing does not offset the strength of the evidence presented at trial to establish a reasonable probability of a different outcome. *See Strickland*, 466 U.S. at 694.

Therefore, Spears’ ineffective assistance of counsel claims fail. *See Mayo*, 301 Wis. 2d 642, ¶61. Given this conclusion, we also reject Spears’ assertion that he suffered cumulative prejudice as a result of the alleged errors by Goldmann. *See State v. Thiel*, 2003 WI 111, ¶59, 264 Wis. 2d 571, 665 N.W.2d 305. Accordingly, we affirm his judgment of conviction and the order denying his postconviction motion.

For all the foregoing reasons,

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

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*