



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

March 18, 2026

To:

Hon. Anthony G. Milisauskas
Circuit Court Judge
Electronic Notice

Angela Conrad Kachelski
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

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

2025AP943-CR

State of Wisconsin v. Nathan Shaw (L.C. #2020CF1135)

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).

Nathan Shaw appeals from a judgment entered after he was found guilty of first-degree intentional homicide, as a party to a crime, with the use of a dangerous weapon, and as a repeater; armed robbery with use of force, as a party to a crime and as a repeater; and possession of a firearm by a felon, as a repeater.¹ He also appeals from an order denying his postconviction motion alleging his trial counsel provided ineffective assistance in failing to advise Shaw he would not be able to assert a self-defense or defense-of-others theory at trial. Based upon our

¹ See WIS. STAT. §§ 940.01(1)(a), 939.05, 939.63(1)(b), and 939.62(1)(c) (count one); WIS. STAT. §§ 943.32(1)(a), 943.32(2), 939.05, 939.62(1)(c) (count two); and WIS. STAT. §§ 941.29(1m)(a), and 939.62(1)(b) (count three). All references to the Wisconsin Statutes are to the 2023-24 version.

review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

In 2020, the State charged Shaw with three counts following the homicide of Nicholas Christman. The Complaint alleged the following facts. Shaw and his codefendant, Giovanni Daniel, set up a drug deal for the purpose of robbing the dealer, E.V.² Shaw and Daniel made contact with E.V. at a third party's home and pretended to be interested in buying cocaine before changing their minds and leaving. They then waited outside until E.V. and Christman exited the residence about 15 minutes later, at which point Shaw and Daniel allegedly "pulled their guns" in an effort to rob E.V. E.V. then "threw the drugs on the grass" and told Shaw and Daniel "to take everything[,]'" at which point E.V. apparently gave Daniel a backpack to presumably fill with the stolen drugs. At that point, Christman approached and tackled Daniel, eventually "[getting] the best of him[,]'" and causing Daniel to scream "help, help" and "get him off me." Shaw then shot Christman, grabbed the backpack, and ran off with Daniel. Multiple cameras recorded Shaw and Daniel fleeing the area immediately after the gunshot. Christman died at the scene.

The circuit court held a two-day bench trial. Multiple witnesses testified against Shaw, including Daniel and E.V. The State introduced video recordings of Shaw and Daniel fleeing the vicinity of the crime scene as well as DNA evidence linking Shaw to the area of the shooting. Counsel requested the court consider instructions on self-defense, defense of others, and the lesser-included offenses of second-degree intentional homicide and first- and second-degree

² We use initials to protect E.V.'s privacy. *See* WIS. STAT. RULE 809.86.

reckless homicide. The State objected, and the court took a recess. Upon reconvening, the court stated, “I kept looking at the Instruction and it keeps talking about self-defense. So I’m trying to figure out what evidence came in as to that Element.” The court then received briefing on the proposed jury instructions and ultimately considered the instructions for self-defense and defense of a third party.

The circuit court concluded that “nothing in the record” supported the theory that Shaw acted in self-defense or in the defense of a third party. The court found Christman had no weapon when he was shot, that “[e]verything took place in a very, very short period of time[,]” that “the robbery was still going on when Mr. Christman was shot[,]” and concluded no “[j]ury could acquit on the issue of First Degree Intentional Homicide here and convict on the Lessor.” The court found Shaw guilty of first-degree intentional homicide, armed robbery, and possession of a firearm by a felon as referenced above.

Shaw filed a postconviction motion alleging his trial counsel was ineffective for advising that Shaw could assert a self-defense argument to the first-degree intentional homicide charge at trial. He claimed that had he known the self-defense argument was not viable, he would have pled guilty and would have received a lesser sentence. The circuit court held a *Machner*³ hearing and denied the motion, finding Shaw’s testimony “totally not credible” and trial counsel’s testimony “highly credible.” The court also found Shaw’s claim that he would have pled guilty was inconsistent with the fact that Shaw maintained his innocence through sentencing. Shaw appeals.

³ *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

“Whether a defendant received ineffective assistance of counsel is a mixed question of law and fact.” *State v. Jenkins*, 2014 WI 59, ¶38, 355 Wis. 2d 180, 848 N.W.2d 786. We “will uphold the circuit court’s findings of fact, including the circumstances of the case and the counsel’s conduct and strategy, unless they are clearly erroneous.” *Id.* Whether counsel was ineffective, however, “is a question of law which we determine independently[.]” *Id.*

In order to demonstrate ineffective assistance of counsel, “the defendant must establish that counsel’s performance was deficient and that the deficient performance was prejudicial.” *State v. Breitzman*, 2017 WI 100, ¶37, 378 Wis. 2d 431, 904 N.W.2d 93; *Strickland v. Washington*, 466 U.S. 668, 687 (1984). “If the defendant fails to satisfy either prong, we need not consider the other.” *Breitzman*, 378 Wis. 2d 431, ¶37.

We reject Shaw’s allegation that he received ineffective assistance of trial counsel because he failed to demonstrate that his trial counsel acted deficiently. Shaw’s ineffective assistance claim is based solely on his claim that if trial counsel had told him he could not assert self-defense at trial, he would have pled guilty and received a lighter sentence. Thus, the only evidence supporting Shaw’s claim that his trial counsel acted deficiently is Shaw’s own testimony.

The circuit court, however, made credibility findings at the *Machner* hearing that are fatal to Shaw’s claim. The court found Shaw’s testimony not credible and his trial counsel’s testimony “highly credible.” It also found that trial counsel’s choices constituted reasonable strategy. The court did not believe Shaw’s testimony that he would have taken a plea—which testimony confirms the State had never offered—because his trial counsel testified Shaw “always wanted to go to [t]rial” and that he (counsel) was “not sure” whether Shaw believed the defense

could proceed to trial with a defense-of-others theory because Shaw insisted he was not involved in the shooting and “wasn’t there.” Trial counsel also testified that because DNA evidence, video surveillance, and witness testimony strongly contradicted Shaw’s “total-innocence” theory, he had also discussed alternative defenses with Shaw and believed a defense-of-others theory could be viable if the factfinder determined the robbery ended before the shooting occurred.

The circuit court’s credibility findings are dispositive. We defer to the circuit court’s “weigh[ing] of the testimony and [assessment of] the credibility of the witnesses” due to its “superior opportunity ... to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony.” *Kleinstick v. Daleiden*, 71 Wis. 2d 432, 442, 238 N.W.2d 714 (1976). Shaw has failed to present anything to show that the court’s credibility findings are erroneous. Thus, we are bound to accept them.

Trial counsel’s pursuit of a defense-of-others theory was a strategic decision that failed. Reasonable strategic decisions do not constitute deficient performance even though they are not successful. *See State v. Ruffin*, 2022 WI 34, ¶30, 401 Wis. 2d 619, 974 N.W.2d 432 (reviewing courts “are highly deferential to counsel’s strategic decisions” which “need not be perfect, or even very good, to be constitutionally adequate”). Shaw’s assertion that “defense counsel did not inform [him] that[,] based on the facts of the case and the caselaw, [he] would not be able to assert ... defense of others at trial” is also incredible as that is the theory of defense Shaw presented during trial. Shaw’s actual grievance appears to be that the circuit court concluded the law did not support that defense under the facts presented.

Because Shaw has failed to demonstrate that trial counsel provided ineffective assistance, we affirm the judgment of conviction and the circuit court's order denying his postconviction motion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and the 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