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DISTRICT IV

June 11, 2026

To:

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Circuit Court Judge
Electronic Notice

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Katrina Rasmussen
Clerk of Circuit Court
Waushara County Courthouse
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Daniel P. Ryan
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You are hereby notified that the Court has entered the following opinion and order:

2024AP2410-CR

State of Wisconsin v. Peter J. Schultz, Jr. (L.C. # 2022CM186)

Before Graham, P.J.¹

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).

Peter J. Schultz, Jr., appeals a judgment of conviction, entered following a jury trial, and an order denying his motion for postconviction relief. The circuit court denied the motion without holding a *Machner* hearing² on Schultz's claims of ineffective assistance of counsel

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

² *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979). A *Machner* hearing is "[t]he evidentiary hearing to evaluate counsel's effectiveness, which includes counsel's testimony to explain [counsel's] handling of the case." *State v. Balliette*, 2011 WI 79, ¶31, 336 Wis. 2d 358, 805 N.W.2d 334.

because, the court determined, he was not entitled to an evidentiary hearing. I agree that Schultz was not entitled to a hearing on his postconviction motion, and I affirm the judgment and order.

The following facts are taken from evidence presented at the jury trial. Late one evening in September 2022, officers from the Waushara County Sheriff's Office were dispatched to a busy rural highway. The officers were dispatched in response to multiple calls reporting a man who was walking on the highway and "jumping in front of vehicles and semis."

The first officer to arrive at the scene identified a man whose appearance matched the man described in the reports. According to the officer's trial testimony, the man, subsequently identified as Schultz, "began to act slightly strangely, he stopped and then started to hop up and down and throw his hands into the air." The officer observed that Schultz was stumbling and had glassy, bloodshot eyes, and she later observed a strong odor of intoxicants coming from his person. The officer advised Schultz of the reports of his behavior and asked for his name. Schultz indicated that he did not want to give his name because he would "get in trouble," and he began to walk away.

Another officer who was at the scene parked his vehicle in a manner that blocked Schultz from proceeding down the highway. The officers continued to interview Schultz. They said that they were investigating complaints of a man "putting the general motoring public at risk" and that they were concerned for his safety. When Schultz again declined to identify himself, the officers told Schultz that he would be arrested if he did not provide his name.

When the officers attempted to take Schultz into custody, he "tense[d] [his] arms in a manner to avoid having them placed behind [his] back" and "became combative and resistive," which impeded the officers' ability to place him in handcuffs. The officers had to use hands-on

force and take Schultz to the ground in order to place the handcuffs around his wrists. Schultz's identification was found during a search of his person incident to his arrest.

When the officers ran a check on Schultz's license, the officers learned that Schultz was on probation and that there was a condition on his probation that required him to refrain from consuming alcohol. The officers contacted the probation office, and staff at the office asked for Schultz to be held on a probation hold.

The officers transported Schultz to the Waushara County Jail. Corrections officers at the jail requested medical clearance, meaning that Schultz would be taken to the hospital and evaluated by medical staff to ensure that he could be safely admitted into the jail. After officers advised Schultz of this plan, he started "tensing up again and stating that he did not want to go" because he did not want to have his blood drawn. When a corrections officer attempted to guide Schultz out of the jail to be transported to the hospital, Schultz "started to run around the room." Officers chased him and attempted to restrain him. It took four officers to hold Schultz down, Schultz kicked at one of the officers during this process, and officers eventually used a taser to restrain him.

Schultz was charged with disorderly conduct and resisting an officer. At trial, the jury instructions made clear that the disorderly conduct charge was based on his resistive conduct during his arrest at the roadside, and the resisting charge was based on his conduct at the jail when he resisted the attempt to transport him to the hospital. The jury found him guilty of both counts.

Schultz filed a motion for postconviction relief seeking reversal of his conviction based on ineffective assistance of trial counsel. He alleged that trial counsel should have filed a motion

to suppress all evidence obtained after Schultz’s arrest because, he argued, the arrest was illegal. He also alleged that counsel should have argued the privilege of self-defense with respect to both charges. Finally, he alleged that counsel should have argued that the State failed to meet its burden of proof because Schultz reasonably believed that the officers were not acting with lawful authority at the time of his arrest and because officers attempted to take him to the hospital for medical care without his consent.

The circuit court denied the motion without a hearing. The court determined that there was no basis to suppress the evidence because Schultz was lawfully arrested. Accordingly, the court determined, counsel was not ineffective for not seeking to suppress evidence. The court also determined that counsel was not ineffective for failing to argue self-defense because Wisconsin law does not recognize “a common law privilege to forcibly resist an unlawful arrest in the absence of unreasonable force,” and because there is no “reasonable probability that the result of Schultz’s trial would have been different” had trial counsel argued self-defense. Schultz appeals.

Whether a postconviction motion alleges sufficient material facts to entitle a defendant to an evidentiary hearing presents a question of law that is reviewed de novo by an appellate court. See *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668. A defendant is entitled to a hearing only if the motion alleges material facts that, if true, would entitle the defendant to relief. *State v. Allen*, 2004 WI 106, ¶14, 274 Wis. 2d 568, 682 N.W.2d 433. If the motion does not raise facts sufficient to entitle the defendant to relief, or if it presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to the requested relief, the circuit court may deny the motion without holding an evidentiary hearing. *Id.*, ¶9.

To prevail on a claim of ineffective assistance of counsel, a defendant has the burden to prove that counsel’s performance was deficient, and that the deficiency prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The defendant must satisfy both prongs of the test—if the defendant fails to satisfy either of the prongs, a court need not address the other. *State v. Elm*, 201 Wis. 2d 452, 462, 549 N.W.2d 471 (Ct. App. 1996).

Schultz first argues that his trial counsel should have filed a motion to suppress evidence obtained as a result of an unlawful arrest. According to Schultz, the arrest was solely based on the fact that he declined to give his name to officers when asked. Schultz argues that, pursuant to *State v. Griffith*, 2000 WI 72, ¶52, 236 Wis. 2d 48, 613 N.W.2d 72, he had “every right to decline to answer” the officers’ questions about his identity. Schultz argues that the failure to file a motion to suppress constitutes deficient performance and was prejudicial because if a motion had been filed, all of the evidence about Schultz’s conduct during his arrest at the roadside and at the jail following his arrest would have been suppressed.

An attorney does not perform deficiently when the attorney declines to file a motion that would have been denied because it lacked merit. *State v. Berggren*, 2009 WI App 82, ¶21, 320 Wis. 2d 209, 769 N.W.2d 110 (counsel does not perform deficiently by failing to raise a legal challenge that would have been properly denied); *see also State v. Simpson*, 185 Wis. 2d 772, 784, 519 N.W.2d 662 (Ct. App. 1994) (defendant is not prejudiced by counsel’s failure to make a motion that would have been denied). And here, regardless of the subjective reasons the officers gave for arresting Schultz, the officers had reasonable suspicion to investigate Schultz for multiple traffic violations and probable cause to arrest him for those violations and for disorderly conduct. *See State v. Repenshek*, 2004 WI App 229, ¶10, 277 Wis. 2d 780, 691 N.W.2d 369 (“the legality of an arrest does not depend on the subjective motivation of the arresting officer[;]

[t]he probable cause standard is an objective one ... [and] is determined objectively without regard to the actual motivations or ... intentions of the arresting officer” (citations and internal quotation marks omitted)).

Here, among other things, the officers had credible information from multiple sources that the man they identified as Schultz was behaving erratically and jumping in front of vehicles, and officers observed Schultz acting erratically. Schultz argues that the officers did not have probable cause to arrest for the traffic violations or disorderly conduct because the officers did not actually see him jumping in front of vehicles, but this argument fails. Under the circumstances here, officers did not need to personally witness Schultz’s commission of these offenses to have probable cause to arrest him for that conduct. *See Johnson v. State*, 75 Wis. 2d 344, 349, 249 N.W.2d 593 (1977). Accordingly, the arrest was lawful, and the circuit court did not need to hold a *Machner* hearing to determine, as a matter of law, that counsel’s failure to file a motion to suppress was not ineffective.

Schultz next argues that trial counsel should have argued that Schultz was privileged to use self-defense at the roadside and at the jail. However, for reasons I now explain, if counsel had requested a self-defense jury instruction, the circuit court could have appropriately refused to instruct the jury on the privilege based on the evidentiary record established at trial.

The argument that Schultz was privileged to use self-defense at the roadside is based on Schultz’s assertion that his arrest was unlawful, and it fails for the reason I have just explained. It also fails because under Wisconsin law, a defendant does not have the privilege to resist an unlawful arrest absent unreasonable force. *State v. Hobson*, 218 Wis. 2d 350, 353, 577 N.W.2d 825.

Turning to Schultz’s argument that he was privileged to use self-defense at the jail, this argument is based on the principle that “‘a competent individual has a protected Fourteenth Amendment liberty interest in refusing unwanted medical treatment.’” *Outagamie County v. Melanie L.*, 2013 WI 67, ¶89, 349 Wis. 2d 148, 833 N.W.2d 607 (quoted source omitted). According to Schultz, he resisted the officers’ attempts to transport him to the jail because he did not want his blood to be drawn, and the trial evidence tends to support that assertion. However, at most, the authority Schultz cites might allow him to refuse a medical professional’s attempt to provide care at the hospital. Schultz was in lawful custody, and the law he cites does not extend to a right to forcibly resist the officers’ attempts to transport him to the hospital in the first instance.

Finally, Schultz argues that, apart from his assertions about self-defense, trial counsel was ineffective for failing to argue that Schultz was not guilty of resisting an officer based on his conduct at the jail—either because the officers were not acting with lawful authority when they sought to transport Schultz to the hospital for medical clearance, or because Schultz had a reasonable belief that the officers were not acting with lawful authority. This argument fails because, even assuming without deciding that counsel could or should have made those arguments, Schultz has not shown a reasonable probability of a different result. During the trial, the jury viewed surveillance footage depicting Schultz’s resistive behavior, which included Schultz running around the jail and kicking an officer, and happened at a time when Schultz was lawfully in police custody. There is not a reasonable probability that the jury would have been swayed by any arguments counsel may have made about Schultz’s right to refuse medical treatment.

IT IS ORDERED that the judgment and order appealed from 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