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DISTRICT III

August 18, 2026

To:

Hon. Leon D. Stenz
Circuit Court Judge
Electronic Notice

Michael C. Sanders
Electronic Notice

Penny Carter
Clerk of Circuit Court
Forest County Courthouse
Electronic Notice

George Tauscheck
Electronic Notice

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

2025AP411-CR

State of Wisconsin v. Jacob L. Marvin (L. C. No. 2022CF168)

Before Stark, P.J., Hruz, and Gill, 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).

Jacob L. Marvin appeals a judgment of conviction and an order denying his postconviction motion for a new trial, in which he argued that his trial attorney was constitutionally ineffective. 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). For the reasons explained below, we conclude Marvin has failed to show that he was prejudiced by his trial counsel's alleged deficiencies. Accordingly, we summarily affirm both Marvin's judgment of conviction and the order denying his postconviction motion.

Following a traffic stop, the State charged Marvin with five counts: possession with intent to deliver methamphetamine; two counts of felony bail jumping; misdemeanor bail jumping; and possession of drug paraphernalia. At Marvin's jury trial, Forest County Sheriff's Deputy Adam Boney testified that he stopped a vehicle Marvin was driving after noticing that the vehicle did not have any license plates. During the stop, a canine alerted to the odor of narcotics on the exterior of Marvin's vehicle. Boney then searched the vehicle and found a "white crystal substance" on the driver's seat that field-tested positive for methamphetamine. Boney also found a "water pipe" or "methamphetamine pipe" in the center console area of the vehicle. In addition, Boney found a sunglasses case on the vehicle's right passenger floorboard that contained two baggies of a "white crystal substance" that field-tested positive for methamphetamine.

Boney testified that the methamphetamine in one of the baggies from the sunglasses case weighed 9.72 grams, the methamphetamine in the other baggie weighed 13.03 grams, and the methamphetamine found on the driver's seat of Marvin's vehicle weighed 0.28 grams. Thus, the total weight of the methamphetamine found in the vehicle was 23.03 grams. Marvin admitted to Boney that he knew the methamphetamine pipe was in the vehicle, but he denied ownership of the methamphetamine. He told Boney that he had just picked up the vehicle and did not know whose methamphetamine was in the vehicle or how it got there.

The State's next witness was Forest County Detective Sergeant Michael Short, who testified that he was a narcotics investigator and was assigned to the Forest County Drug Task Force, the North Central Wisconsin Drug Enforcement Group, the Northeast Tri-County Drug Enforcement Group, and the Native American Drug and Gang Initiative. Short explained that he responded to the scene of Marvin's traffic stop with a deputy whom he was training that day.

When asked whether he was familiar with Marvin at the time of the stop, he responded, “Yes, sir, from prior law enforcement contacts.”

Short testified that he had 16 years of law enforcement experience, that he had been involved in narcotics investigations for 12 years, and that he had participated in approximately 40 controlled buys involving methamphetamine. Based on his training and experience, he testified that the pipe found in Marvin’s vehicle was “consistent with a methamphetamine pipe.” He also testified that the methamphetamine found in Marvin’s vehicle had a street value of approximately \$2,300 and comprised “92 dosage units,” with an average dose being approximately one quarter of a gram.

The State’s final witness was Michelle Gee, a controlled substance analyst from the Wisconsin State Crime Laboratory. Gee testified that she tested the substance inside one of the baggies from Marvin’s vehicle and identified the presence of methamphetamine. She did not test the substance in the other baggie or the substance found on the driver’s seat, but she “visually inspected” those substances and confirmed that they were a white crystalline material.

Marvin chose not to testify in his own defense, and the defense rested without presenting any witnesses. The circuit court instructed the jury regarding both Count 1—possession of methamphetamine with intent to deliver—and the lesser-included offense of possession of methamphetamine. The jury ultimately found Marvin guilty of all five charged offenses, including possession of methamphetamine with intent to deliver. The jury further found that the total weight of the methamphetamine was more than 10 grams but not more than 50 grams.

Marvin moved for postconviction relief, arguing—as relevant here—that his trial attorney was constitutionally ineffective by failing to object or move for a mistrial when Short testified that

he was familiar with Marvin from “prior law enforcement contacts.” Marvin argued that Short’s testimony in that regard “made the jury more inclined to believe that [Marvin] was a drug dealer and not someone guilty of mere possession.”

The circuit court held an evidentiary hearing on Marvin’s ineffective assistance claim, at which Marvin’s trial attorney was the only witness. Following the hearing, the court denied Marvin’s postconviction motion, after concluding that Marvin had failed to establish either deficient performance or prejudice. In particular, with respect to prejudice, the court reasoned that Short’s comment about knowing Marvin from prior law enforcement contacts was merely “one statement, one brief moment” in the context of Marvin’s entire trial, during which “[m]uch evidence was presented” and there was “overwhelming evidence of [Marvin’s] guilt.” Under these circumstances, the court stated it would be mere “conj[e]cture” to “assume” that Short’s comment had any effect on the jury’s verdict.

On appeal, Marvin renews his argument that his trial attorney was constitutionally ineffective by failing to object or move for a mistrial when Short testified that he was familiar with Marvin from prior law enforcement contacts. Whether an attorney rendered ineffective assistance is a mixed question of fact and law. *State v. Nielsen*, 2001 WI App 192, ¶14, 247 Wis. 2d 466, 634 N.W.2d 325. We will uphold the circuit court’s findings of fact unless they are clearly erroneous, but whether the defendant’s proof is sufficient to establish ineffective assistance is a question of law that we review independently. *Id.*

To prevail on an ineffective assistance claim, a defendant must show both that counsel’s performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). However, if a defendant fails to make a sufficient

showing on one prong of this test, we need not address the other. *Id.* at 697. Here, we conclude that Marvin’s ineffective assistance claim fails because he has not shown that his trial attorney’s alleged errors prejudiced his defense.

To demonstrate prejudice in the ineffective assistance context, a defendant must show 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. “[A] defendant need not prove the outcome would ‘more likely than not’ be different in order to establish prejudice in ineffective assistance cases,” *State v. Sholar*, 2018 WI 53, ¶44, 381 Wis. 2d 560, 912 N.W.2d 89 (citation omitted), but “[i]f there is no reasonable probability that the jury would have reached a different verdict, then a defendant has not proven prejudice,” *id.*, ¶46. Importantly, a defendant must “offer more than rank speculation to satisfy the prejudice prong” of an ineffective assistance claim. *State v. Erickson*, 227 Wis. 2d 758, 774, 596 N.W.2d 749 (1999).

Marvin argues that he was prejudiced by his trial attorney’s failure to object to Short’s testimony or move for a mistrial because there is a reasonable probability that, had counsel taken either of those actions, the jury would have acquitted him of the charge of possession of methamphetamine with intent to deliver and convicted him of the lesser-included offense of possession of methamphetamine. Marvin notes that he lacked some of the normal indications of drug dealing, such as having “a lot of cash” and “a bunch of phones and text messages.” He also emphasizes that, at sentencing, the circuit court acknowledged that “[t]here wasn’t a lot of other evidence really of the intent [to deliver,] other than pretty much the amount [of methamphetamine].” Marvin therefore asserts that the admission of testimony about his “past

contacts with a specialized drug investigator clearly undermined confidence in the trial's outcome between the jury's finding of guilt for intent to deliver versus mere possession."

Like the circuit court, we conclude that Marvin's argument regarding prejudice is purely speculative. First, as the circuit court aptly noted, Short's testimony did not necessarily imply that Marvin's past contacts with law enforcement were "for some criminal matter" in which Marvin was the offender. Instead, Short "may have been in contact with [Marvin] as a victim" or "a witness." Thus, it is speculative to assume—as Marvin argues—that the jury would have understood Short's comment to mean that Marvin was a drug dealer and would have therefore concluded, based on Short's comment, that Marvin was guilty of possession with intent to deliver methamphetamine, rather than simple possession.

Second, we agree with the circuit court that the State presented "overwhelming evidence of [Marvin's] guilt" on the charge in question. At trial, the court instructed the jury that to determine whether Marvin had the intent to deliver methamphetamine, it needed to consider "all facts and circumstances in this case bearing upon knowledge," including "the quantity and the monetary value of the substance." The State introduced evidence at trial that Marvin possessed a total of 23.03 grams of methamphetamine, which had a street value of about \$2,300 and comprised "92 dosage units." The value of the methamphetamine in Marvin's possession and the large number of individual doses constituted strong evidence that the methamphetamine was not merely for Marvin's personal use and that Marvin instead intended to deliver the methamphetamine. Given this strong evidence of Marvin's intent to deliver the methamphetamine, we see no reasonable probability that the jury would have acquitted Marvin of possession with intent to deliver, but convicted him of simple possession, absent trial counsel's alleged errors in failing to object to Short's testimony or move for a mistrial.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT.
RULE 809.21 (2023-24).

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

Samuel A. Christensen
Clerk of Court of Appeals