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DISTRICT I

January 22, 2025

To:

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Circuit Court Judge
Electronic Notice

Mark S. Rosen
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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

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

2023AP2067-CR

State of Wisconsin v. Antwon G. Matthews (L.C. # 2020CF1490)

Before White, C.J., Donald, P.J., and Colón, 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).

Antwon G. Matthews appeals his judgment of conviction for first-degree reckless homicide using a dangerous weapon, and the order denying his postconviction motion. Matthews argues that his trial counsel was ineffective for failing to object to purported hearsay testimony, and for failing to call two witnesses. 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 (2021-22).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The charge against Matthews stems from the shooting death of Robert Roy. Roy was shot during a fight outside of a food market in April 2020. Police were able to obtain surveillance video from the market, as well as cell phone video of the fight. The fight began between Trayveon Roy, the victim's grandson, and Willie Warrior, a relative of Matthews. As the fight broke up, the cell phone video shows a man pointing a gun in the direction of Trayveon, which is also the general area where Roy was shot. The video shows that man firing one shot; two more gunshots are then heard on the video after the person with the phone ran when the shooting started. The store surveillance video shows Trayveon and Roy reacting to the gunshots, and Roy falling on the sidewalk. It then shows Trayveon shooting back in the direction where the first shot came from.

Police interviewed the store owner, who witnessed the fight. He told police that he saw a heavyset Black man in a dark shirt with a lanyard around his neck pull out a gun with an extended magazine and start shooting. The owner was able to point out the shooter on the surveillance video, although he was not able to make an identification from a line-up.

Police also interviewed Warrior. He stated that Matthews was at the fight and had a handgun with an extended magazine in his pocket. Warrior told police that after the fight broke up, he heard shots and saw Roy fall to the ground; he turned and saw Matthews with a gun pointed in Roy's direction. Warrior said that Trayveon then shot at him as he was leaving the scene in his vehicle. Police found two 9mm casings in the area where Matthews had been standing during the fight, and four 9mm casings in the area where Roy was shot.

Matthews was arrested and charged with first-degree reckless homicide with use of a dangerous weapon. The matter proceeded to trial in May 2021. Warrior testified on behalf of

the State; however, he stated that he did not remember many details about the fight, including who he was fighting and who else was there, including Matthews. In fact, Warrior stated he did not know Matthews before that day, even though he had told police that he had known Matthews for ten to fifteen years.²

Warrior further testified that he did not remember telling police he had seen Matthews with a gun during the fight, or that he saw Matthews pointing that gun in the direction of Roy right after Roy was shot. However, the detective who took Warrior's statement testified about Warrior's statement to police that he saw Matthews during the fight with a gun, and that he saw Matthews pointing the gun in the direction of Roy just after Roy had been shot.

Other witnesses for the State included Roy's nephew, who witnessed the fight and identified Matthews as the shooter, and Warrior's grandmother, who identified Matthews from a still photo from the video footage as the person at the scene of the fight with a gun in his hand. In that photo, Matthews is wearing a dark shirt with a lanyard around his neck. Additionally, the jury saw the surveillance and cell phone videos of the incident, and the still photos from those videos.

The jury found Matthews guilty as charged. The trial court imposed a sentence consisting of twenty-five years of initial confinement to be followed by ten years of extended supervision.

² Warrior did not say that Matthews was his relative. Warrior's grandmother, who testified for the State, explained that Matthews and Warrior are cousins, but that they may not have "know[n] too much about each other," although other witnesses stated that they knew Matthews and Warrior were related.

Matthews subsequently filed a postconviction motion alleging ineffective assistance of counsel. He argued that trial counsel should have objected to the detective's testimony regarding Warrior's initial statement to police as being hearsay. Matthews also asserted that counsel failed to call two witnesses—Rodney Strowder, who is Trayveon's brother, and Chaudra Watts, who is Warrior's girlfriend—whose testimony would have “materially assisted” Matthews' defense.

The trial court rejected Matthews' claims. With regard to the detective's testimony, the court found that Matthews had not established that his trial counsel's performance was deficient, because an objection to the detective's testimony on hearsay grounds would have been overruled on grounds that it related to a prior inconsistent statement made by Warrior to the detective, and because the court did not believe that Warrior's “memory lapses” during his testimony were in good faith. With regard to the two witnesses, the court agreed with the State's position that neither witness would have been “particularly helpful” to the defense. Furthermore, the court found that it was not probable that either alleged deficiency would have changed the outcome of the trial in light of the “mountain of other evidence placing the defendant at the scene with a firearm and implicating him in the homicide.” The court therefore denied Matthews' postconviction motion without a hearing.

On appeal, Matthews renews his ineffective assistance of counsel claims. To prove ineffective assistance of counsel, a 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 defendant must prove both prongs of this test or the claim fails. *Id.* In our review of ineffective assistance claims, we will uphold factual findings unless they are clearly erroneous; the question of whether counsel's performance was deficient and whether the

defendant was prejudiced are questions of law that we decide *de novo*. *State v. Hunt*, 2014 WI 102, ¶22, 360 Wis. 2d 576, 851 N.W.2d 434.

“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice ... that course should be followed.” *Strickland*, 466 U.S. at 697. To demonstrate prejudice, the 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. On review, appellate courts are to “consider the totality of the evidence before the trier of fact.” *State v. Johnson*, 153 Wis. 2d 121, 130, 449 N.W.2d 845 (1990).

Given the evidence presented by the State at trial, we conclude that the alleged errors—failing to object to the detective’s testimony or calling the two witnesses—are insufficient to establish a reasonable probability of a different result at Matthews’ trial. *See id.*; *Strickland*, 466 U.S. at 694. Even if the jury had not heard the detective’s testimony regarding Warrior’s statement implicating Matthews as the shooter, it heard other evidence placing Matthews at the scene with a gun. This includes the store owner’s testimony about witnessing the fight and the shooting, and his identification of the shooter from the videos. That identification was corroborated by Warrior’s grandmother—Matthews’ aunt—who identified Matthews from a still photo as being the person at the fight holding the gun. Roy’s nephew, another witness of the fight, also identified Matthews as the shooter. Additionally, the detective testified that a tattoo on the shooter’s forearm seen in the videos was similar to a tattoo on Matthews’ arm. Furthermore, the jury members themselves saw the videos and the still photos, and could make their own assessment after seeing Matthews in the courtroom.

The information gleaned from the statements by the two potential witnesses who were not called would not overcome this evidence. One of those witnesses, Watts, told police that she did not see who shot Roy. She later identified Matthews in a still photo obtained from the video as Warrior's cousin, and "thought she could see a gun in his hand." Such testimony likely would have assisted the State's case more so than Matthews' defense.

The other witness, Strowder, pointed out someone in the crowd other than Matthews as the shooter from the video. However, he gave conflicting descriptions of the shooter to detectives prior to being shown the video. Furthermore, it is not likely that this testimony would have outweighed the other evidence pointing to Matthews as the person with the gun. *See Johnson*, 153 Wis. 2d at 130; *Strickland*, 466 U.S. at 694.

In short, Matthews has not demonstrated that he was prejudiced by the alleged errors of trial counsel. Therefore, his ineffective assistance claim fails. *See Strickland*, 466 U.S. at 687. Accordingly, we affirm.

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.

Samuel A. Christensen
Clerk of Court of Appeals