

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

December 21, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-1558-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**EDWARD L. WILSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: DIANE S. SYKES and DANIEL L. KONKOL, Judges.  
*Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Edward Wilson appeals from a judgment of conviction and order denying his postconviction motion. The issues are: (1) whether his trial counsel was ineffective; (2) whether he should be granted a

new trial based on newly discovered evidence or in the interest of justice; (3) whether the admission of certain testimony was harmless error; and (4) whether certain evidence should have been admitted at trial. We affirm.

¶2 Wilson was found guilty of first-degree intentional homicide while armed, and armed robbery. There was testimony at trial that Wilson was involved in a robbery of Eric Hutchins and his girlfriend, Twanda Guiden. One witness testified that he saw Wilson pointing a gun at Hutchins, who was fatally shot shortly after that. That witness also testified that Wilson told him later that he had shot the man because he would not give up his money.

¶3 Wilson first argues that the trial court erred by denying his claim of ineffective assistance of counsel without holding an evidentiary hearing. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We affirm the trial court's findings of fact unless they are clearly erroneous, but the determination of deficient performance and prejudice are questions of law that we review without deference to the trial court. *State v. Pitsch*, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985). We need not address both components of the analysis if the defendant makes an inadequate showing on one. *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. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.*

¶4 If the postconviction motion alleges facts which would entitle the defendant to relief, the circuit court has no discretion and must hold an evidentiary

hearing. *State v. Bentley*, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). Whether a motion alleges facts which, if true, would entitle a defendant to relief is a question of law we review de novo. *Id.*

¶5 Wilson's postconviction motion alleged that his trial attorney did not conduct an adequate investigation. The motion alleged certain specific facts that Wilson's investigator discovered in a postconviction investigation. Wilson argues that the additional evidence, which we will not attempt to describe in detail here, tends to show that a different person or persons killed Wilson, and that the evidence might have given the jury reasonable doubt.

¶6 We conclude that the trial court properly denied this portion of the motion without a hearing. Even if Wilson had presented this additional evidence in a postconviction hearing, the new evidence is insufficient to undermine our confidence in the outcome of the trial. In other words, these facts, even if true, do not entitle Wilson to relief. Wilson's additional evidence is vague and lacking in detail, and is far from being compelling evidence that another person or persons killed Hutchins. Wilson's theory of defense at trial was that he was not at the scene of the shooting, and that certain prosecution witnesses gave inconsistent accounts because they were fabricating to tell the police what they wanted to hear. The jury apparently rejected those arguments and found the State's evidence sufficient to warrant conviction. It is unlikely that the additional evidence Wilson now relies on would change the jury's evaluation of the theories he relied on at trial, or that it would provide a different basis for reasonable doubt.

¶7 Wilson's second argument is that he should be granted a new trial on the basis of newly discovered evidence. The evidence in question is the same additional evidence that we discussed in the ineffective counsel argument. Wilson

acknowledges that one element he must show on this issue is that it is reasonably probable that a different result would be reached at a new trial. For the reasons we described above, we conclude that Wilson has not made a sufficient showing on this point, and therefore is not entitled to a new trial.

¶8 Wilson's third argument is that we should grant a new trial in the interest of justice pursuant to our discretionary authority under WIS. STAT. § 752.35 (1997-98).<sup>1</sup> His argument is that the real controversy was not fully and fairly tried because of his counsel's lack of information about the people Wilson now asserts were the killers. Again, for the reasons described above, we conclude that the absence of this information from the trial did not prevent the real controversy from being tried.

¶9 Wilson next argues that the trial court erred by allowing certain testimony by Michelle Gramoll which he claims was inadmissible hearsay. The testimony had to do with an alleged statement by Wilson that could be understood as an admission that he killed Hutchins, although Gramoll said she understood it as a joke. The State argues that the testimony was properly admitted. However, if it was not, the State argues that its admission was harmless error. Wilson does not respond to the State's harmless error argument. We conclude that the error, if any, was harmless. The probative value of the evidence was modest because of its ambiguous nature, especially when compared to the strength of other evidence the State offered at trial.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶10 Finally, Wilson argues that the trial court erred in denying his motion at trial to introduce evidence that other people may have killed Hutchins. The parties agree that the applicable legal standard requires, among other elements, that there be evidence of a “direct connection” between the other person and the crime. That evidence, in this case, consisted of nothing more than a statement that one of the people was parked behind Wilson’s vehicle near the crime scene. This evidence does not show a direct connection. Furthermore, even if there was evidence of that person’s connection to the crime, that would not necessarily exonerate Wilson, because both could have been involved.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

