COURT OF APPEALS
DECISION
DATED AND FILED

August 10, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2454-CR **Cir. Ct. No. 2003CF718**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ANDREA D. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Judgment affirmed and cause remanded with directions; order affirmed.*

Before Lundsten, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Andrea Williams appeals from a judgment convicting him of first-degree recklessly endangering safety, while armed and as a repeater, and bail jumping. He also appeals from the order denying his motion for

postconviction relief. He argues that he received ineffective assistance of counsel and that the circuit court improperly denied his request for new counsel. We affirm, but remand to the trial court to order the clerk of circuit court to correct the judgment of conviction.

¶2 Williams first contends that his trial counsel ineffectively represented him. To prove a claim of ineffective assistance of counsel, Williams must show that his counsel performed deficiently and that deficient performance prejudiced his defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Williams contends that the prosecutor's closing argument misstated defense counsel's opening statement and theory of defense, and that Williams was deprived of a fair trial because defense counsel did not object to the prosecutor's argument.

¶3 During opening statements, Williams's counsel explained to the jury that Williams had been shocked when he realized that he had stabbed the victim. Defense counsel said:

> More importantly, his reaction to the situation. I can't believe I did this. I can't believe it. I'm sorry. I didn't mean it. He was horrified by what had happened and he was sorry and he didn't—that knife did not go into her again. She wasn't stabbed again.

During closing argument, the prosecutor argued that Williams had intended to kill the victim. The prosecutor said:

> The defense told you in their opening statement that when [Williams] grabbed that knife he only meant to hurt her. Ladies and gentlemen, he'd already hurt her, and you know it. He had already hurt her. He wanted more. Hurting her was not enough.

¶4 The prosecutor did not significantly misstate the defense's opening statement or the theory of defense. The only reasonable inference from defense counsel's opening statement is that Williams did stab the victim, but he was horrified because he did not intend to stab her. To the extent Williams is complaining that his trial counsel was pursuing what was in Williams's view an improper trial strategy, we disagree. The trial strategy that Williams's counsel was pursing was not unreasonable in light of evidence showing that Williams was beating the victim when the victim noticed she was bleeding and saw Williams standing over her with a knife. There was no evidence to suggest that anyone else was present or that anyone other than Williams was the perpetrator. Thus, the only viable defense available to Williams was that he did not *intend* to stab the victim and he did not *intend* to kill her. The prosecutor's argument, while not precise, effectively captures the gist of this defense. Therefore, we reject Williams's claim of ineffective assistance of counsel.

¶5 Williams next argues that the circuit court improperly addressed his request for new counsel, which he made in the middle of trial.[1] "The Sixth Amendment guarantee of assistance of counsel includes a qualified right to representation by counsel of the accused's choice." ***State v. Wanta***, 224 Wis. 2d 679, 702, 592 N.W.2d 645 (Ct. App. 1999). When considering a defendant's request for substitution of counsel made during trial, which may necessitate a continuance, the circuit court should consider: (1) the length of the delay requested; (2) whether counsel has associates prepared to try the case in his or her absence; (3) whether other continuances have been requested and received by the

[1] Williams did not specifically state that he wanted a new lawyer, but the reasonable inference from his statement that he wanted to fire his lawyer was that he wanted a new lawyer.

defendant; (4) the convenience or inconvenience to the parties, witnesses and the court; (5) whether the delay seems to be for legitimate reasons or whether the delay is dilatory; and (6) other relevant factors. ***State v. Lomax***, 146 Wis. 2d 356, 360, 432 N.W.2d 89 (1988).

¶6 We conclude that the circuit court acted properly in denying Williams's request. The circuit court listened at length to Williams's complaints about his attorney. Although the court did not comment explicitly on each of the ***Lomax*** factors, the record persuades us that the court considered the appropriate factors and gave an adequate explanation for denying the request. The court explained that it was not going to stop the trial midway through because Williams did not have a legitimate reason for the delay; that is, Williams's request for a new attorney was based primarily on Williams's unhappiness with a newspaper article about the case, which the court accurately observed was not within the court's control. Williams argues that the court improperly treated his request for new counsel as a request to proceed pro se. We disagree. The court simply stated the obvious. Because it refused to delay the trial—and witnesses were going to continue to be called in short order—Williams would have to represent himself if he fired his attorney.

¶7 Although we affirm the circuit court, we must remand. The jury found Williams guilty of first-degree recklessly endangering safety, while armed. The judgment of conviction incorrectly states that Williams was convicted of attempted first-degree intentional homicide. We remand to the trial court with directions to order clerk of circuit court to correct this error.

By the Court.—Judgment affirmed and cause remanded with directions; order affirmed.

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