

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 12, 2009**

David R. Schanker  
Clerk of Court of Appeals

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**Appeal No. 2008AP797-CR**

**Cir. Ct. No. 2006CF4988**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MEKIOUS D. BULLOCK,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgments and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*<sup>1</sup>

Before Curley, P.J., Kessler and Brennan, JJ.

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<sup>1</sup> A corrected judgment of conviction was entered regarding the count of first-degree intentional homicide as a party to a crime. The correction related to the restitution ordered by the court.

¶1 CURLEY, P.J. Mekious D. Bullock appeals the judgments, entered following a jury trial, convicting him of first-degree intentional homicide and mutilating a corpse, both as a party to a crime, contrary to WIS. STAT. §§ 940.01(1)(a), 940.11(1), and 939.05 (2005-06).<sup>2</sup> Bullock also appeals from the order denying his postconviction motion. On appeal, Bullock raises three issues. First, he maintains that the trial court erred in denying his *Miranda-Goodchild*<sup>3</sup> motion because his incriminating statements given to police were not knowingly and voluntarily made. Second, he argues that the trial court erred when it permitted a subjectively biased juror to remain on the jury. Finally, he submits that a State expert witness's opinion explaining the cause of death should not have been admitted because the witness could not say that the opinion was to a reasonable degree of certainty. Because Bullock's incriminating statements were properly admitted; no subjectively biased juror heard Bullock's case; and the expert witness's opinion was properly admitted, we affirm.

## I. BACKGROUND.

¶2 According to the criminal complaint and the testimony at trial, on August 25, 2006, the police were dispatched to a fire on the northwest side of Milwaukee where a charred body was discovered burning on top of what appeared to be a garbage cart. After an investigation, the police were able to match the DNA of the deceased with that of Lusheena Watts, who had been reported missing the same day as the fire.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

<sup>3</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966); *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

¶3 A co-defendant, Iven Caldwell, revealed to the police that he was friends with Bullock and that they were having difficulty drug dealing because Watts, a local prostitute and drug addict, was providing information to a rival drug dealer. As a consequence, Caldwell said Bullock told him that Bullock wanted to kill Watts. The two men then contacted Watts and lured her into a van owned by another co-defendant, Thomas Wilder, promising her that they would give her money and rocks of cocaine in exchange for sexual favors. Once in the van the four of them (Caldwell, Bullock, Wilder, and Watts) rode around and smoked marijuana, and eventually Caldwell and Bullock dropped Wilder off at his house. Caldwell, Bullock, and Watts then drove to an area where they could engage in sexual activity. Caldwell claimed that Watts was engaged in a sex act with him when Bullock remarked, "Is now the right time?" Caldwell, believing Bullock was referring to the right time to kill Watts, stopped what he was doing. Bullock then said he wanted to have sex with Watts, and when Watts turned away from Bullock, Caldwell said Bullock began strangling Watts, possibly breaking her neck before she died. Wilder testified at trial that when the van came back to pick him up he saw Bullock choking Watts in the rear of the van, and after she died, the three of them disposed of the body by dumping it in a garbage cart and starting a fire.

¶4 Bullock was arrested on September 15, 2006, after he was the driver of a car involved in a high-speed chase with the police. He claimed the police beat him up at the scene and that his injuries were not the result of the car rolling down a hill. In any event, Bullock received some minor cuts and bruises, and after he was treated at the hospital, the police took him into custody. While there, detectives decided to speak to him because his name had come up in their investigation of Watts's death. In Bullock's first interview with the police, he

acknowledged knowing Watts, but denied having any involvement in her murder. Later, he gave a statement to the police in which he admitted to essentially the same sequence of events that Caldwell said led to the murder of Watts, except Bullock claimed that Caldwell initially began strangling her.

¶5 After Bullock was charged, the court held a suppression motion. At it, two police officers testified, as did Bullock. The officers testified that they read Bullock his *Miranda* rights and interviewed Bullock at different times. Bullock testified that he was coerced into giving a statement because one of the detectives repeatedly punched him when the other detective was out of the room. The trial court denied the motion and a jury trial date was set.

¶6 During *voir dire*, the prosecutor asked one of the prospective jurors if he believed that a person who is a police officer must be telling the truth, and this juror replied that, “In that field that he’s in, he should be [telling the truth].” No objection was made to this juror, nor was the juror stricken.

¶7 One of the many witnesses who testified at trial was Wieslawa Tlomak, a doctor who worked for the Milwaukee County Medical Examiner’s Office. She explained to the jury that she had reviewed Watts’s autopsy reports and determined that the cause of death was “homicidal violence[,] probably a manual strangulation.” In response to a question by Bullock’s attorney concerning whether or not the doctor could state to a reasonable degree of medical certainty that Watts was strangled, Dr. Tlomak replied that, “I am certain about 80 percent that she was strangled.”

¶8 Numerous police officers testified regarding their involvement in the investigation. Also, other witnesses were called, some of whom had been incarcerated with Bullock. These witnesses stated that Bullock had admitted to

them his role in the homicide. The jury found Bullock guilty of both charges. Bullock was sentenced to life imprisonment with no eligibility of extended supervision on the first-degree intentional homicide charge, and seven and one-half years of incarceration and five years of extended supervision on the mutilating a corpse charge, to be served consecutively. Bullock brought a postconviction motion claiming that a juror was subjectively biased and that Dr. Tlomak's expert opinions should not have been permitted. Bullock argued that if the trial court felt the juror issue had been waived, then his attorney was ineffective.<sup>4</sup> The motion was denied. The trial court adopted the State's brief *in toto* as its decision. The trial court did not conduct a *Machner* hearing.<sup>5</sup> This appeal follows.

## II. ANALYSIS.

### A. *Bullock's statements to police were properly admitted.*

¶19 Bullock argues that the trial court erred when it denied his suppression motion seeking to prevent the introduction at trial of his incriminating statements given to the police. Bullock submits that his statements admitting to the murder were involuntary because he gave the statements only after one of the detectives punched him repeatedly.

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<sup>4</sup> In using the term "waiver," we are aware of the recently decided case of *State v. Ndina*, 2009 WI 21, \_\_\_ Wis. 2d \_\_\_, 761 N.W.2d 612, where our supreme court clarified the distinction between the terms "forfeiture" and "waiver." See *id.*, ¶19 ("Although cases sometimes use the words 'forfeiture' and 'waiver' interchangeably, the two words embody very different legal concepts. 'Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right.'") (citation omitted). Although forfeiture is applicable in the context, we use waiver to be consistent with the cases cited.

<sup>5</sup> *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

¶10 The standards for determining whether a defendant waived his or her protections against self-incrimination are well-settled. The State must prove that the accused was informed of his or her constitutional rights, understood those rights, and knowingly, intelligently, and voluntarily waived them. *State v. Santiago*, 206 Wis. 2d 3, 18-19, 556 N.W.2d 687 (1996). The State must prove by a preponderance of the evidence that the accused’s waiver is knowing, intelligent, and voluntary. *State v. Agnello*, 226 Wis. 2d 164, 181-82, 593 N.W.2d 427 (1999).

¶11 “In reviewing a denial of a motion to suppress, we will uphold the [trial] court’s findings of fact unless they are clearly erroneous.” *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997). “Whether those facts satisfy the constitutional requirement of reasonableness is a question of law, which we review *de novo*.” *Id.* (italics added).

¶12 The principles of law governing the voluntariness inquiry are summarized in *State v. Hoppe*, 2003 WI 43, ¶36, 261 Wis. 2d 294, 661 N.W.2d 407. There, the court observed that a defendant’s statements are voluntary “if they are the product of a free and unconstrained will, reflecting deliberateness of choice, as opposed to the result of a conspicuously unequal confrontation in which the pressures brought to bear on the defendant by representatives of the State exceeded the defendant’s ability to resist.” *Id.* A necessary prerequisite for a finding of involuntariness is coercive or improper police conduct. *Id.*, ¶37. The voluntariness of a confession is evaluated on the basis of the totality of the circumstances surrounding that confession. *Id.*, ¶38.

¶13 The officers testified that Bullock freely gave his statements after being informed of his *Miranda* rights, that no threats or promises were made to

him, and that he was never physically harmed. Bullock testified that he was repeatedly punched, which is why he confessed, and that the striking detective said he also had to write an apology or he was going to continue to beat him.

¶14 In its ruling denying the motion, the trial court noted that Bullock was familiar with his rights because he had been read his *Miranda* rights before. In addition, the trial court found that during questioning, no threats or promises were made to Bullock and he was given creature comforts. Further, the trial court found he did not appear to be in pain or tired during interviews, and he freely answered questions. In conclusion, the trial court found that his statements “were a voluntary product of a free and unconstrained will reflecting a deliberateness of choice and not coerced or the product of any improper police practices.” Implicit in this finding was the trial court’s disbelief of the version of the events given by Bullock. This implicit finding by the trial court is not clearly erroneous.

¶15 Bullock’s testimony concerning the events of the night he was arrested and the subsequent interviews with the police bordered on the preposterous. Before the police ever suspected Bullock of the murder of Watts, he was involved in a high-speed chase with the police, and he insisted that he was not in the roll-over crash as the police claimed. Rather, he argued that he had gotten out of the car before it rolled down a hill and his injuries were all a result of police brutality at the scene of the roll-over. Adding to this, he submits that once he was arrested, he was again the victim of police brutality, but by a different officer, this time one of the interviewing detectives who repeatedly punched him in the head. Not only does his story seem unlikely, adding to its improbability was his testimony in which he related more than once that he was struck on the right side of the head and face. However, the State introduced his booking picture which

showed that his left eye, not his right, was swollen and bruised due to what the State purported were his injuries in the car accident.

¶16 The issue before the court was one of credibility, and the trial court determined that the testimony of the police officers was entitled to greater weight than the account given by Bullock. Under the totality of the circumstances as set forth in the testimony of the police officers, Bullock's incriminating statements were given knowingly, intelligently, and voluntarily. The trial court properly denied the motion.

*B. Bullock's jury did not contain a subjectively biased juror.*

¶17 Next, Bullock argues that based on the answers of juror number nine during *voir dire*, the juror should have been stricken from the jury for cause. He submits that the juror evinced a subjective bias in favor of the testimony of police officers.

¶18 Subjective bias refers to the prospective juror's state of mind, and is revealed through the words and demeanor of the prospective juror. *State v. Faucher*, 227 Wis. 2d 700, 717, 596 N.W.2d 770 (1999). To determine subjective bias, we inquire "whether the record reflects that the juror is a reasonable person who is sincerely willing to set aside any opinion or prior knowledge that the juror might have." *State v. Kiernan*, 227 Wis. 2d 736, 745, 596 N.W.2d 760 (1999).

¶19 Juror number nine was asked the following questions by the State and gave the following answers:

[Prosecutor]: [Juror number nine], you wouldn't believe that Detective Gulbrandson is more credible just because he's a police officer, would you?

[Juror number nine]: I mean –

[Prosecutor]: Would you – Just because he's a police officer, a detective, you wouldn't say, wow, he must be telling me the truth, would you?

[Juror number nine]: In that field that he's in, he should be.

[Prosecutor]: But you wouldn't assume it, would you?

[Juror number nine]: I wouldn't assume it, but I –

[Prosecutor]: You would hope.

[Juror number nine]: Yeah. I would hope so for my well being also.

[Prosecutor]: You would hope that anybody who took the stand would be telling you the truth, wouldn't you?

[Juror number nine]: Yes.

[Prosecutor]: And what if someone was a prisoner, somebody in jail, does the same thing apply?

[Juror number nine]: Being credible?

[Prosecutor]: Yeah.

[Juror number nine]: I believe so.

[Prosecutor]: Okay. You wouldn't say Detective Gulbrandson is more credible just because he's a police officer, right?

[Juror number nine]: Would I say he's more credible?

[Prosecutor]: Right. You wouldn't give him more credibility because of what his job is, would you?

[Juror number nine]: That's a good question.

[Prosecutor]: Okay. I guess what I'm getting at is the flip side. Just because somebody is in jail, does that mean they can never be credible?

[Juror number nine]: No. I don't think because they are in jail or they can [sic].

¶20 Bullock's attorney followed up on these answers and asked the following questions:

[Defense Counsel]: ... Number nine, sir. You said you had a relative in law enforcement, but I didn't hear who it was or what their relationship was.

[Juror number nine]: Yeah. I have a first cousin.

[Defense Counsel]: What does he or she do?

[Juror number nine]: I think he's a deputy.

[Defense Counsel]: Down here for Milwaukee County?

[Juror number nine]: Yes.

[Defense Counsel]: Do you talk to him about his work?

[Juror number nine]: No. We don't really talk. We don't discuss his work.

[Defense Counsel]: You don't know if he's on the freeway or investigating criminal matters?

[Juror number nine]: He once was on the freeway. Last time I heard.

[Defense Counsel]: Okay. Doesn't sound like you have a lot of contacts with him.

[Juror number nine]: Yeah. Rarely.

[Defense Counsel]: Okay. Would that cause you to be any more or less fair or unbiased in this case if you found there were deputies involved in this situation?

[Juror number nine]: No.

[Defense Counsel]: Which I don't think you're going to hear about. Okay. Thank you.

¶21 We reject Bullock's argument. Bullock has waived this issue by not objecting to the juror during *voir dire*. In *State v. Brunette*, 220 Wis. 2d 431, 442,

583 N.W.2d 174 (Ct. App. 1998), we concluded that a defendant waives an objection to juror bias if prior to the jury being sworn in no motion is made to the trial court to remove a juror for cause. We explained that a juror bias claim is subject to waiver because the trial court and prosecutor are in a position to correct errors, thereby avoiding any unnecessary reversals, and the decision about whom to select as jurors should be made when the recollections of counsel and the court are fresh. *See id.* at 441. Bullock argues, in the event we apply waiver to his argument, that his attorney was ineffective for not challenging this juror.

¶22 In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that his attorney’s performance was deficient and that he was prejudiced as a result of his attorney’s deficient conduct. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also State v. Pitsch*, 124 Wis. 2d 628, 633, 369 N.W.2d 711 (1985). To prove deficient performance, the defendant must show specific acts or omissions of his attorney that fall “outside the wide range of professionally competent assistance.” *Strickland*, 466 U.S. at 690. To show prejudice, the defendant must demonstrate that the result of the proceeding was unreliable. *Id.* at 687. If the defendant fails on either prong—deficient performance or prejudice—his ineffective assistance of counsel claim fails. *Id.* at 697. We “strongly presume[.]” counsel has rendered adequate assistance. *Id.* at 690. Before a court may reverse a conviction on the grounds that an attorney provided ineffective representation, trial counsel must be examined in a postconviction evidentiary hearing regarding the reasons, if any, for the actions or omissions in his representation cited by the defendant. *See State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

¶23 Here, the trial court did not conduct a *Machner* hearing. None was needed because a trial court can properly deny the postconviction motion without

a hearing if the defendant fails to allege facts which, if true, would entitle the defendant to relief, or if the defendant presents only “conclusory” allegations, without alleging facts that allow the reviewing court to meaningfully assess his or her claim. *State v. Bentley*, 201 Wis. 2d 303, 309-11, 313-14, 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 that we review *de novo*.” *Id.* at 310 (italics added).

¶24 Juror number nine was asked if he assumed a police officer would be a more credible witness than any other witness simply because of his status as a police officer. Juror number nine answered that, “In that field that he’s in, he should be [telling the truth].” This answer did not demonstrate a bias in favor of the police. Rather, the thoughtful answer reflected a hope that, given the enormous responsibility of being a police officer and the need for the public to trust the police, that police officers would be truthful. Evidence of this intent comes from the fact that juror number nine followed up by saying that he would not assume that a police officer was telling the truth.

¶25 Later, Bullock’s attorney asked some additional questions of juror number nine. In response to a question concerning juror number nine’s cousin who was a deputy sheriff, the juror answered “no” to the following question: “Okay. Would that cause you to be any more or less fair or unbiased in this case if you found there were deputies involved in this situation?” Nothing in juror number nine’s answers suggested he was favoring the testimony of law enforcement, nor did juror number nine’s answers suggest he was an unreasonable person who was unwilling to be fair and impartial.

¶26 We have reviewed the questions and answers given by juror number nine and we are satisfied that his answers did not suggest a subjective bias in favor

of the police. Consequently, because no deficient performance occurred here, no *Machner* hearing was needed. Moreover, Bullock's attorney consulted with Bullock concerning the persons to be stricken from the panel. He cannot now complain about the jury panel when he agreed with his attorney's selection.

*C. Dr. Tlomak's medical opinion was properly admitted.*

¶27 Bullock's final argument is that he is entitled to a new trial because Dr. Tlomak's testimony concerning her medical opinion regarding the cause of death of Watts should not have been admitted into evidence. Bullock argues that the doctor's testimony that, "I am certain about 80 percent that [Watts] was strangled," did not meet the required reasonable degree of medical certainty standard and, consequently, the State did not prove a cause of death.

¶28 Whether an expert's opinion should be admitted into evidence is a matter of the trial court's discretion. *Martindale v. Ripp*, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698. We "will uphold a decision to admit or exclude evidence if the [trial] court examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion." *Id.*

¶29 "No particular words of art are necessary to express the degree of ... certainty required to remove an expert opinion from the realm of mere possibility or conjecture." *Drexler v. All American Life & Casualty Co.*, 72 Wis. 2d 420, 432, 241 N.W.2d 401 (1976). "The test to be applied is whether a reasonable interpretation of the expert's words demonstrate that he [or she] was expressing his [or her] expert ... opinion." *Id.* However, the objection that an expert's testimony lacks the required degree of certitude is waived unless it is raised at the trial. *Id.*

¶30 Bullock is aware of the fact that his attorney failed to object to Dr. Tlomak's testimony. He argues, as he did for the lack of an objection to the allegedly subjectively biased juror, that should we apply waiver, then the failure to object constituted ineffective assistance of counsel. We will not repeat the *Strickland* requirements for finding a lawyer ineffective as we set them out earlier in the opinion. Because Dr. Tlomak's medical opinion was properly admitted, Bullock's attorney was not ineffective.

¶31 Dr. Tlomak did not perform the autopsy. The doctor who did perform the autopsy was unavailable to testify. As a result, Dr. Tlomak reviewed the entire file and came to the same conclusions as did the other doctor. During her testimony, Dr. Tlomak was asked the cause of Watts's death. She answered: "The cause of death was a [sic] homicidal violence[,] probably a manual strangulation." She explained that although the body was badly charred, an internal examination revealed:

[Dr. Tlomak:] Examination of the neck revealed hemorrhages which are bleedings in the anterior muscles of the neck. And also there's a small bone in the upper neck called hyoid bone, and there was a disruption of the right lateral portion of this bone in the joint.

[Prosecutor:] And what does that tell you?

[Dr. Tlomak:] It tells me that it is possible strangulation based especially on the bleedings in the neck.

[Prosecutor:] Was there any evidence, Doctor, that the neck bones were broken at all?

[Dr. Tlomak:] There was a disruption of the hyoid bone.

[Prosecutor:] What does disruption mean?

[Dr. Tlomak:] A disruption means that it's not continuous in the joint. And in her case since she was a young person, the hyoid bone is still not calcified, but it's

very likely so it wasn't fractured. It was just disrupted because it's still very flexible.

On cross-examination, Dr. Tlomak was asked how this bleeding could occur, and she responded: "It can be [a] result of blunt force injury and it can be [a] result of strangulation or hanging." When pressed to explain her belief that the cause of death was from strangulation, Dr. Tlomak said, "I am certain about 80 percent that she was strangled." Bullock argues that being eighty percent certain does not comport with the requirement that the medical opinion be to a reasonable degree of medical certainty.

¶32 We need not answer that question because the doctor was certain that the death was caused by "homicidal violence." What was less clear were the actual mechanics of her death. The doctor's opinion concerning the cause of death satisfied the elements of first-degree intentional homicide—that Bullock intended to and did cause the death of Watts. *See* WIS JI—CRIMINAL 1010. Dr. Tlomak's testimony was properly admitted. As a consequence, Bullock's attorney was not ineffective.

¶33 For the reasons stated, the judgments of conviction and order denying postconviction relief are affirmed.

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

Not recommended for publication in the official reports.

