COURT OF APPEALS
DECISION
DATED AND FILED

March 6, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP166-CR **Cir. Ct. No. 2006CF2830**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRITNEY M. LANGLOIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: DANIEL R. MOESER, Judge. *Affirmed.*

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

¶1 CURLEY, P.J. Britney M. Langlois appeals the judgment convicting her of first-degree intentional homicide and armed robbery, and appeals the order denying her postconviction motion. Langlois argues that she is entitled to a new trial because the trial court erred by: (1) denying her ***Batson*** challenge

when the State struck an African-American juror from the panel;[1] (2) denying her pretrial motion for *in camera* review of a witness' mental health records; (3) allowing the State to ask her, on cross-examination, whether she had ever shot a gun before; and (4) denying her postconviction motion, which argued that trial counsel was ineffective. We reject Langlois' arguments and affirm.

I. BACKGROUND.

¶2 Langlois was tried in 2007 on charges of first-degree intentional homicide and armed robbery. The State alleged that on November 21, 2006, Langlois shot and killed Henry Lee, Jr., and stole his money and marijuana.

The State's Version of Events

¶3 At trial, numerous witnesses testified on the State's behalf, including: Nicole Williams, Nicole Black, Altisha Rodgers, and Vincent Lowe—all of whom Langlois was with immediately before and after the shooting; Brenda Preston, Langlois' grandmother; and several police officers involved in the homicide investigation. Their testimony, in the aggregate, was as follows:

¶4 After running an errand, Black, along with her friend Williams and her "weed man," Lee, returned to her apartment at 7101 Flower Lane in Madison and found childhood friend Langlois outside her door. Langlois said that she needed to make a phone call. The four of them went into Black's apartment, and Langlois opened her purse to look for her phone book. As she did so, Black noticed a gun inside Langlois' purse.

[1] *See* ***Batson v. Kentucky***, 476 U.S. 79 (1986).

¶5 Langlois told the group that she needed to "hit a lick"—in other words, she needed to win the lottery or rob someone—because she needed some money.[2] Langlois asked whether Lowe, who lived in an apartment across the parking lot, had any money or drugs.

¶6 While Langlois was still at Black's apartment, Lee pulled out some money and counted it. It included at least one hundred-dollar bill and several twenties. At some point Langlois and Lee began to argue. Williams noticed that Langlois was "real jittery" and "couldn't be still." With her hand on her purse, Langlois said to Lee, "I don't argue with niggers like you. I'll pop they ass." Langlois then left Black's apartment.

¶7 After leaving Black's apartment, Langlois went to the apartment of Rodgers and Lowe, who lived at 7007 Flower Lane. Langlois told Rodgers that she was broke and needed money. She also told Rodgers and Lowe that Black was not to be trusted because she was "tryin' to get somebody to come over here and rob you all."

¶8 Upon hearing he was about to be robbed, Lowe got upset and left to go to Black's apartment, where he confronted her with Langlois' accusation that she was planning to rob him. Lee set him straight, explaining that it was *Langlois* who had been talking about committing a robbery, and that she had a gun in her purse. When Lowe heard this, he immediately ran back to his apartment.

[2] *See also* definition, URBAN DICTIONARY, website (last visited Mar. 1, 2012) (defining term "hit a lick" as obtaining a large amount of money in a short amount of time).

¶9 When Lowe returned, he searched Langlois' purse, found a gun inside, and confronted Langlois about her true motives. Langlois became upset. She took the gun back from Lowe and put it back into her purse. Langlois said that Lee "was lying on her," and that she was "gonna take his shit"—referring to his marijuana. Langlois then left Rodgers and Lowe's apartment.

¶10 After Langlois left Rodgers and Lowe's apartment, Lowe, from his window, saw Langlois cross the parking lot and disappear from view.

¶11 About five minutes later, Lowe saw Lee and Langlois come out of the apartment building together. They appeared to be "having some words." Lee went to his car, and Langlois began walking towards Rodgers and Lowe's apartment. Langlois then stopped, "busted a U-turn," and ran back towards Lee, again disappearing from sight. Lowe heard Lee's car start up, and then both Rodgers and Lowe heard a gunshot.

¶12 After the gunshot rang out, Langlois returned to Rodgers and Lowe's apartment and put the gun and a bag of marijuana on the table. Langlois said she had "domed" Lee; in other words, she had shot him in the head. Langlois made a phone call, put the gun back into her purse, and left, taking the bag of marijuana with her.

¶13 After Langlois left Rodgers and Lowe's apartment for the second time, she was picked up by Preston in the Memorial High School parking lot. As they were driving home, Langlois told Preston that she thought she shot someone and gave her the gun. Preston stopped the car on John Nolen Drive and threw the gun in Lake Monona. At the same time, a passing motorist observed a woman walk from a car that was stopped on John Nolen and throw something into the water.

¶14 Meanwhile, Black and Williams were leaving Black's apartment to buy snacks at a nearby gas station when they saw Lee in his car with the driver's door open and his foot sticking out. At that point, they did not think anything was wrong. When they returned, however, they noticed that Lee was still in the same position. Black walked over to his car and saw blood on the seat.

¶15 Williams called the police. A responding officer found Lee—dead—in the driver's seat. A sheriff's deputy subsequently found a handgun in Lake Monona. A state crime lab firearms examiner testified that a cartridge casing found in Lee's car had been fired from the gun recovered in the lake. Additionally, a magazine that fit the gun was found in a grassy area near Memorial High School.

¶16 Langlois was arrested in Chicago four days after the shooting.

Langlois' Version of Events

¶17 At trial, Langlois testified in her own defense. Langlois claimed that she did not shoot Lee; Lowe did. According to Langlois, the chain of events leading up to the shooting was set in motion by Lowe's ex-girlfriend, Black, who told Langlois that she was having problems with Lowe's current girlfriend, Rodgers, and that she was going to rob her.

¶18 Langlois testified that she went to Rodgers' apartment to warn Rodgers about Black's intention to rob her. She denied having a gun in her purse at this point. According to Langlois, Lowe became very angry when he learned that Black wanted to rob him and left to go to Black's apartment. When he returned, he told Rodgers that the people there had said that it was actually *Langlois* who had talked about robbing *them*. Lowe then said that "he'd be

damned if somebody robbed him," walked into the back room, and returned with a gun. Langlois consequently went back to Black's apartment, where she accused Black of lying to Lowe.

¶19 When Langlois returned to Rodgers and Lowe's apartment for the second time, she saw Lowe was pacing between the hallway and the apartment with his gun. Lowe left, and shortly thereafter she and Rodgers heard a shot. According to Langlois, Lowe returned to the apartment with a bag that Lee had. Lowe wiped the gun off with his shirt, handed it to Langlois, and told her to get rid of it. Langlois said she took the gun because Lowe told her to and because she did not want to "test" him.

¶20 After the shooting, Langlois left Rodgers and Lowe's apartment for the last time and walked across the street to Memorial High School, where her grandmother, Preston, picked her up. During the drive across town, Langlois gave Preston the gun. Preston stopped the car on John Nolen Drive and threw the gun into the lake.

¶21 Langlois explained that she took the bus to Chicago the next day because her baby's father lives there. She did not call the police because Lowe had threatened her and her family.

Procedural History

¶22 The jury found Langlois guilty of both armed robbery and first-degree intentional homicide. After sentencing, Langlois filed a postconviction motion for a new trial, which was denied. A notice of appeal was then filed on her behalf, accompanied by a no-merit appeal. After the no-merit appeal was filed, this court ordered counsel either to supplement the no-merit report or consult with

Langlois about filing an additional postconviction motion. That appeal was later dismissed.

¶23 Thereafter, Langlois filed a second postconviction motion, which was also denied. Langlois now appeals. Further facts will be developed as necessary below.

II. ANALYSIS.

¶24 On appeal, Langlois argues that she is entitled to a new trial because the trial court erred in four ways: (1) denying her ***Batson*** challenge when the State struck an African-American juror from the panel; (2) denying her pre-trial motion for *in camera* review of a witness' mental health records; (3) allowing the State to ask her, on cross-examination, whether she had ever shot a gun before; and (4) denying her postconviction motion, which argued that trial counsel was ineffective. We address each argument in turn.

*(1) The trial court's decision to reject Langlois' **Batson** challenge was not clearly erroneous.*

¶25 Langlois argues that the trial court erred when it determined that the State struck a potential juror from the panel for a race-neutral reason. *See* ***Batson v. Kentucky***, 476 U.S. 79, 89 (1986) ("Although a prosecutor ordinarily is entitled to exercise permitted peremptory challenges 'for any reason at all,' … the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race.") (citations omitted). Both Langlois and the potential juror stricken by the State are African-American.

¶26 During *voir dire*, two prospective jurors whom the trial court said "appear to be members of [racial] minorities" were removed from the panel by

peremptory strikes. Langlois struck one of these jurors because the juror's husband was a police sergeant. The State struck the other juror because he was "the only person in the entire pool … who acknowledged having a prior criminal conviction." The district attorney explained:

> There were, as I recall, a number of [jurors with] OWIs and actually, [the stricken juror] also had an OWI, but the others had, as I recall, what sounded like civil OWIs; a disorderly conduct, [which the stricken juror had,] while it's not the most serious crime, … is a crime, and it was I believe he said five years ago. So it is not that distant that it couldn't be relevant. I think that's a reasonable consideration that he might harbor some difficulty in being fair to the [S]tate.

The district attorney further explained that he made a strategic decision not to question the juror about the details of his disorderly conduct conviction because "[w]e all know disorderly conducts can involve all kinds of different factors," and the details "might present some embarrassment to him."

¶27 On appeal, we will affirm the trial court's decision unless it is clearly erroneous. *See* ***State v. Lamon***, 2003 WI 78, ¶¶2, 43-45, 262 Wis. 2d 747, 664 N.W.2d 607.[3] In other words, we will affirm the trial court's ruling so long as the court "'examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.'" *See* ***State v. Jenkins***, 2007 WI 96, ¶30, 303 Wis. 2d 157, 736 N.W.2d 24 (citation omitted).

[3] While there is an exception to this deferential standard of review in circumstances where the trial court judge does not have an opportunity to evaluate the juror's credibility, *see* ***State v. Lamon***, 2003 WI 78, ¶¶46-57, 262 Wis. 2d 747, 664 N.W.2d 607, neither party argues that this exception applies here.

¶28 ***Batson*** outlines a three-step process for determining whether a prosecutor's peremptory strikes violate the Equal Protection Clause. ***Id.***, 476 U.S. at 96-98; *see also* ***State v. Davidson***, 166 Wis. 2d 35, 39-40, 479 N.W.2d 181 (Ct. App. 1991) (applying ***Batson*** test in Wisconsin).

¶29 First, the defendant must establish a *prima facie* case of discriminatory intent by showing that:

> (1) he or she is a member of a cognizable group and that the prosecutor has exercised peremptory strikes to remove members of the defendant's race from the venire, and (2) the facts and relevant circumstances raise an inference that the prosecutor used peremptory strikes to exclude venirepersons on account of their race.

Lamon, 262 Wis. 2d 747, ¶28 (footnote omitted). With regard to this first factor, the trial court "must consider all relevant circumstances in determining whether a defendant made the requisite showing. Those circumstances include any pattern of strikes against jurors of the defendant's race and the prosecutor's *voir dire* questions and statements." ***Id.*** (emphasis added).

¶30 Second, "if the [trial] court finds that the defendant has established a *prima facie* case, 'the burden shifts to the State to come forward with a neutral explanation for challenging [the dismissed venireperson].'" ***Id.***, ¶29 (citing ***Batson***, 476 U.S. at 97) (alteration in ***Lamon***). A "'neutral explanation' means an explanation based on something other than the race of the juror." ***Lamon***, 262 Wis. 2d 747, ¶30 (citation omitted). "The prosecutor's explanation must be clear, reasonably specific, and related to the case at hand"[;] however, it "need not rise to the level of justifying exercise of a strike for cause." ***Id.***, ¶29.

¶31 Third, "when the prosecutor offers a race-neutral explanation, the [trial] court has the duty to weigh the credibility of the testimony and determine

whether purposeful discrimination has been established." ***Id.***, ¶32. This third step includes that, once steps one and two have been completed, "the defendant may show that the prosecutor's explanation for the peremptory challenge is in fact pretext for racial discrimination." ***State v. Walker***, 154 Wis. 2d 158, 176 n.11, 453 N.W.2d 127 (1990). In other words, "[t]he defendant then has the ultimate burden of persuading the court that the prosecutor purposefully discriminated or that the prosecutor's explanations were a pretext for intentional discrimination." ***Lamon***, 262 Wis. 2d 747, ¶32. After engaging in this analysis, if the trial court is satisfied with the explanation, and the explanation is plausible, the ***Batson*** challenge is unsuccessful. *See* ***Lamon***, 262 Wis. 2d 747, ¶32.

¶32 With this three-step analysis in mind, we turn to Langlois' arguments on appeal. Langlois claims that the trial court did not properly apply the third step of the ***Batson*** analysis. She contends that the trial court should not have accepted the prosecutor's explanation that the potential juror was struck due to his criminal record. This is because, Langlois argues, the juror's criminal conviction was not for a serious crime, but rather, for a disorderly conduct, and the State never inquired as to whether the conviction was a mere ordinance violation or whether it was "criminal." Langlois further contends that striking this particular juror was pretextual because many of the jurors who were not stricken had OWI violations.

¶33 After reviewing the record, we are satisfied that the trial court properly applied the ***Batson*** test. Here, the trial court believed the prosecutor's explanations for striking the African-American juror. The trial court reasoned: "I'll allow the strike. The fact of a prior one or more criminal convictions I think is a relevant factor for the prosecution. I don't know that the [S]tate's required to go into any further for the reasons [the prosecutor] mentioned." This finding,

given the factual circumstances precipitating the strike, is not clearly erroneous. *See* ***Lamon***, 262 Wis. 2d 747, ¶¶2, 43-45; ***Jenkins***, 303 Wis. 2d 157, ¶30. We are, furthermore, not convinced that the State's decision to strike this particular juror was pretextual, as Langlois argues, because he did not commit a "serious" crime. As the State argued, and the trial court implicitly acknowledged, the issue was not only the conviction, but also its recency. Furthermore, even though, as Langlois correctly notes, many of the jurors who were not stricken had OWI violations, she has not shown that any of them had more than a single OWI violation; and as the State argued and the trial court acknowledged, the stricken juror had an OWI *and* another criminal conviction. Therefore, we conclude that the trial court properly applied the three-part ***Batson*** test.

(2) Langlois was not entitled to an in camera review of Preston's mental health records.

¶34 Langlois additionally argues that the trial court erred in denying her an *in camera* review of Preston's mental health records prior to trial. As the defendant, Langlois bears the burden of making a preliminary evidentiary showing before the trial court that an *in camera* review is appropriate. *See* ***State v. Green***, 2002 WI 68, ¶20, 253 Wis. 2d 356, 646 N.W.2d 298. Whether she submitted a preliminary evidentiary showing sufficient for an *in camera* review is a question of law that we review *de novo*. *See* ***id.*** Factual findings made by the trial court in its determination, on the other hand, are reviewed under the clearly erroneous standard. *See* ***id.*** Moreover, even if we determine the requisite showing was made, Langlois is not automatically entitled to a remand for an *in camera* review, because she "still must show the error was not harmless." *See* ***id.***

¶35 "[T]he preliminary showing for an *in camera* review" requires Langlois "to set forth, in good faith, a specific factual basis demonstrating a

reasonable likelihood that [Preston's mental health records] contain relevant information necessary to a determination of guilt or innocence and [are] not merely cumulative to other evidence available." *See* ***id.***, ¶34 (emphasis added). Information is "'necessary to a determination of guilt or innocence' if it 'tends to create a reasonable doubt that might not otherwise exist.'" ***Id.*** (citation omitted). Langlois also had the burden "to reasonably investigate information related" to Preston "before setting forth an offer of proof and to clearly articulate how the information sought corresponds to his or her theory of defense." *See* ***id.***, ¶35. Additionally, we note that if the question of whether to allow an *in camera* review "is a close call," the court "should generally provide an *in camera* review." *See* ***id.*** (emphasis added).

¶36 Langlois argues that Preston's mental health records were necessary to show whether the side effects of the numerous medications—including antidepressants—she was taking when police interviewed her about the incident affected her ability to recall the events of the incident accurately. According to Langlois, because Preston "provided testimony that [Langlois] had given her a firearm later identified by an expert as the weapon used to kill the victim," review of her mental health records was necessary "to notify the jury of the significance of Ms. Preston's mental health issues and why the credibility of her testimony should have been subjected to heightened scrutiny."

¶37 We disagree. As the trial court succinctly explained, "we need a lot more than 'someone is taking medications and once in a while doesn't remember things,' something more specific, before we even look at the … records." (internal quotation marks and some punctuation added); *see also* ***id.***, ¶¶34-35. Langlois does not articulate how review of Preston's mental health records corresponds to her defense theory beyond stating that the jury should not have believed Preston

because her medications cause her to misremember from time to time. Moreover, as the State points out, Langlois' attorney elicited on Preston's cross-examination the very information that Langlois claims the jury needed to know:

> Q: Now, isn't it true that you told Detective Riesterer that because you were on a lot of medications, you have difficulty recalling things?
>
> A: Yes.
>
> Q: And isn't it true that oftentimes you get confused?
>
> A: Yes.
>
> Q: And isn't it true that oftentimes you forget things?
>
> A: Yes.
>
> Q: And isn't it true that oftentimes you imagine things?
>
> A: Yes….
>
> Q: Are you on medications for bipolar?
>
> A: Yes….
>
> Q: Isn't it true that in the last three or four months you've been treated by Dane County Mental Health for mental health conditions?
>
> ….
>
> A: Yes….
>
> Q: Now, there's been some talk – once again, there was some testimony of you having interviews with Detective Riesterer…. Isn't it true that on one such occasion, Detective Riesterer interviewed you immediately after you had a seizure?
>
> A: Yes….
>
> Q: And isn't it true that at that time you were under a lot of stress?
>
> A: Yes.

> Q: And … isn't it possible that the amount of stress that you had in combination with your medications and mental illness could have caused you to say things that weren't true?
>
> A: I guess so. I believe them to be true. That's how it works….
>
> Q: Isn't it true because of your mental health condition you don't know what [Langlois] told you when you picked her up and … you don't know if [Langlois] told you those things or if you made them up for the police trying to come up with an alibi for [her]?
>
> A: Maybe so. Maybe you're right.

We therefore reject Langlois' arguments regarding this issue and affirm the trial court's decision. Langlois was not entitled to an *in camera* review of Preston's mental health records. *See* ***id.***, ¶¶20, 34-35.

(3) The trial court did not erroneously exercise its discretion by allowing the State to question Langlois regarding whether she previously discharged a firearm.

¶38 We turn next to Langlois' argument that the trial court erred in allowing the State to introduce evidence that she had previously discharged a firearm. This is a decision we review for an erroneous exercise of discretion. *See* ***State v. Hunt***, 2003 WI 81, ¶34, 263 Wis. 2d 1, 666 N.W.2d 771; *see also* ***State v. Hammer***, 2000 WI 92, ¶21, 236 Wis. 2d 686, 613 N.W.2d 629. "If there was a reasonable basis for the court's determination, then we will not find an erroneous exercise of discretion." *See* ***Hammer***, 236 Wis. 2d 686, ¶21.

¶39 Prior to trial, the State filed a motion seeking permission to introduce evidence that Langlois took part in an armed robbery in which she shot one of the victims. The State argued that such evidence should be allowed to rebut any testimony that Langlois shot Lee by mistake. The trial court denied the

motion, but stated that its ruling could change "depending on how the case comes in."

¶40 At trial, Langlois testified on direct examination that after Lowe shot Lee, he gave her the gun to dispose of, and that the gun felt "awkward" in her hand. Additionally, when asked on direct examination how the gun's magazine came to be found at Memorial High School, Langlois answered that, "it might have dropped while I went over there … I don't know." When asked whether the magazine was in the gun when she left Rodgers and Lowe's apartment, she responded, "I don't know, but I wouldn't rule it out, since it was found. But I don't know how to check it like that."

¶41 Following Langlois' direct examination, the district attorney requested permission to ask whether Langlois had fired a gun in the past:

> Your Honor, the defendant just testified on one occasion that the gun felt awkward in her hand, so she had trouble with it…. And then also at the very end, she's trying to explain the magazine business and she's gesturing and saying, "I don't know how to check the magazine of a gun."
>
> There was a pretrial motion. It involved her shooting a human being. I appreciate the prejudicial nature of that. My proposal is to have a question that she has fired a gun in the past. I would not ask her about at another human being. If she says no, we'll see how far it goes. I wouldn't be proving up the prior shooting of another human being.

¶42 The trial court, over Langlois' objection, allowed the evidence, explaining:

> I will allow questions about her familiarity with a gun or guns. We're not going to get into what she did in the other situation. You can ask her if she's ever shot a gun. She's tried to give the impression on direct that she doesn't understand guns, and I think the [S]tate's entitled to explore that.

¶43 Consequently, on cross-examination, the district attorney asked Langlois if she had "shot a handgun before." Langlois answered that she had.

¶44 Langlois argues that the trial court erred in allowing the question of whether Langlois had shot a gun before because, "[t]he issue … was not whether [she] had previously fired a handgun. The issue was whether [she] had used a specific firearm to kill the victim," and evidence that she fired a gun before served no reason other than "to allow the jury to infer [Langlois] was a violent person." Langlois further argues that the allowing of the testimony "was not a fair application of the curative admission doctrine."

¶45 We disagree with Langlois; the trial court did not err in allowing the district attorney to question Langlois about whether she previously shot a gun after she strongly implied on direct examination that she was unfamiliar with guns. Given the context of Langlois' testimony on direct examination, the questioning allowed by the trial court was reasonable. *See*, *e.g.*, ***Hammer***, 236 Wis. 2d 686, ¶21. The trial court limited the testimony elicited to allow the State to impeach Langlois' implication that she was unfamiliar with guns. It did not allow any further, more prejudicial, testimony to come out; for example, there was no testimony that Langlois had previously shot another person. Therefore, we do not agree with Langlois' contention that the only permissible inference one could derive from this testimony was that she was a violent person. Individuals shoot guns for a variety of reasons—some of them recreational. The prosecutor's point in this particular case was that Langlois was in fact personally familiar with the act of firing a handgun.

¶46 Moreover, we disagree with Langlois' contention that the curative admissibility doctrine applies here. Under the curative admissibility doctrine:

> when one party accidentally or purposefully takes advantage of a piece of evidence that is otherwise inadmissible, the court may, in its discretion, allow the opposing party to introduce otherwise inadmissible evidence if it is required by the concept of fundamental fairness to cure some unfair prejudice.

State v. Dunlap, 2002 WI 19, ¶32, 250 Wis. 2d 466, 640 N.W.2d 112. In Langlois' case, the State did not argue that it should be allowed to introduce the evidence because she "accidentally or purposefully" took advantage of evidence that was otherwise inadmissible. *See* ***id.*** Therefore, the doctrine does not apply. Rather, as the trial court observed, Langlois "tried to give the impression" that she did not "understand guns."

¶47 Furthermore, we agree with the State that any error that may have occurred by the trial court allowing the evidence would have been harmless. An error is harmless if it "sufficiently undermines the court's confidence in the outcome of the judicial proceeding" or if it is "'clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.'" ***State v. Harris***, 2008 WI 15, ¶¶42-43, 307 Wis. 2d 555, 745 N.W.2d 397 (citation omitted).

¶48 The district attorney used the evidence for a very limited purpose: to question Langlois' testimony implying that she was unfamiliar with guns. Indeed, in closing argument, the district attorney noted:

> The defendant also testified yesterday that the gun felt awkward in her hands when she was carrying it, and she also testified that she couldn't—when I asked her about the magazine, she couldn't really talk about it [be]cause she didn't know how it worked. But in fact, she had to admit that she has in fact shot a handgun before.

¶49 Given the very limited purpose for which this evidence was used, and given the compelling evidence of guilt as obtained through the testimony of

numerous witnesses, as well as the physical evidence recovered in this case, we conclude that the evidence in question does not sufficiently undermine our confidence in the outcome, nor is it clear beyond a reasonable doubt that the jury would have found Langlois guilty even if it had not learned that she had not previously fired a handgun. *See* ***id.***, ¶¶42-43. Any error in admitting that evidence was therefore harmless.

¶50 Finally, for all of the aforementioned reasons, we also reject Langlois' argument that the decision to allow testimony regarding whether she had previously shot a gun was erroneous when combined with other alleged errors at trial. Lumping together failed claims does not create a successful claim; "adding them together adds nothing. Zero plus zero equals zero." *See*, *e.g.*, ***Mentek v. State***, 71 Wis. 2d 799, 809, 238 N.W.2d 752 (1976) (some capitalization omitted).

(4) Trial counsel was not ineffective.

¶51 Langlois also argues that trial counsel was ineffective for failing to object to the State's request to declare two witnesses experts in the presence of the jury. "We review the denial of an ineffective assistance claim as a mixed question of fact and law." ***State v. Kimbrough***, 2001 WI App 138, ¶27, 246 Wis. 2d 648, 630 N.W.2d 752. We will affirm the trial court's factual findings unless they are clearly erroneous. ***Id.*** However, we review whether trial counsel's performance was deficient and prejudicial independently, as a question of law. *See* ***id.***

¶52 To establish a claim for ineffective assistance of counsel, Langlois must show that trial counsel's performance was deficient and that this deficient performance was prejudicial. *See* ***State v. Mayo***, 2007 WI 78, ¶33, 301 Wis. 2d 642, 734 N.W.2d 115. To establish deficient performance, Langlois must show facts from which a court could conclude that trial counsel's representation was

below the objective standards of reasonableness. *See* ***State v. Wesley***, 2009 WI App 118, ¶23, 321 Wis. 2d 151, 772 N.W.2d 232. To demonstrate prejudice, she "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." *See* ***Strickland v. Washington***, 466 U.S. 668, 694 (1984). If Langlois fails to make a sufficient showing on one ***Strickland*** prong, we need not address the other. *See* ***id.*** at 697.

¶53 During trial, two experts testified on behalf of the State: Dr. Robert Corliss, a pathologist; and William Newhouse, a firearms expert. For each expert, the State asked the trial court to qualify him as an expert early in his testimony. The court found Dr. Corliss an expert and implicitly recognized Newhouse as an expert.[4] On neither occasion did defense counsel object to the procedure.

¶54 Although we certainly disagree with Langlois that trial counsel's performance was deficient for failing to object to the qualification of Dr. Corliss and Newhouse as experts because it was done in the jury's presence, *see* ***Collier v. State***, 30 Wis. 2d 101, 106-07, 140 N.W.2d 252 (1966) (trial court's *voir dire* examination of defendant's seven-year-old son in presence of jury was not erroneous where court instructed jury that the jury was the sole judge of credibility of witnesses as well as of weight and effect of the evidence),[5] we need not address

[4] When the district attorney asked that Dr. Corliss "be qualified as an expert for the purposes of his testimony today," the trial court answered, "[o]kay. He is." When the State moved to qualify Newhouse as an expert witness, the trial court responded, "[t]hank you."

[5] While Langlois notes that ***Collier v. State***, 30 Wis. 2d 101, 140 N.W.2d 252 (1966), decided before ***Strickland v. Washington***, 466 U.S. 668 (1984), laid the framework for ineffective assistance of counsel claims, ***Collier*** is still good law, and is on all fours with Langlois' case. *See* ***id.***, 30 Wis. 2d at 106-07.

this issue in depth because Langlois concedes that she was not prejudiced by the alleged error. *See* ***Strickland***, 466 U.S. at 697 (if defendant fails to make a sufficient showing on one prong of ineffective-assistance analysis, we need not address the other); *see also* ***State v. Zien***, 2008 WI App 153, ¶3, 314 Wis. 2d 340, 761 N.W.2d 15 (cases should be decided on narrowest possible ground). While Langlois does argue that the trial court's "action did give the impression to the jury that the State was calling a court-sanctioned, truthful witness," she concedes, in both her brief and her reply, that this alleged error is "insufficient to warrant a new trial." On this concession, we agree with Langlois. She did not challenge the opinions of either Dr. Corliss or Newhouse at trial, and she does not do so on appeal. Moreover, the trial court properly instructed the jury members that *they* were the ultimate judges of the validity of the experts' opinions. *See* ***Collier***, 30 Wis. 2d at 107. Therefore, we can conceive of no discernible prejudice that would result from their being qualified as experts in the jury's presence.

¶55 We further note that Langlois asks us to consider trial counsel's alleged error in conjunction with other errors as sufficient to warrant the ordering of a new trial. As noted, however, lumping together failed claims does not create a meritorious claim. *See, e.g.*, ***Mentek***, 71 Wis. 2d at 809. Therefore, because Langlois can demonstrate neither deficient performance nor prejudice, her claim that trial counsel rendered ineffective assistance fails.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.