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**DISTRICT I**

August 30, 2017

To:

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Circuit Court Judge  
Milwaukee County Circuit Court  
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Milwaukee, WI 53233

Hon. Frederick C. Rosa  
Circuit Court Judge  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP696-CR                      State of Wisconsin v. Lewis Christopher Wilder  
(L.C. # 2014CF5186)

Before Kessler, Brash and Dugan, JJ.

**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).**

Lewis Christopher Wilder appeals a judgment convicting him of first-degree recklessly endangering safety and possession of a firearm by a felon. He contends that he is entitled to a new trial because he did not knowingly, intelligently, and voluntarily waive his right to testify during his jury trial. 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 (2015-16).<sup>1</sup>  
We affirm.

A criminal defendant has a fundamental constitutional right to testify. *State v. Weed*, 2003 WI 85, ¶40, 263 Wis. 2d 434, 666 N.W.2d 485. Because the right to testify is a fundamental constitutional right, a defendant who chooses not to testify must intentionally relinquish that right. *Id.* To that end, the circuit court should conduct an on-the-record colloquy with the defendant outside the presence of the jury to ensure that the defendant is knowingly and voluntarily waiving his or her right to testify. *Id.*, ¶¶40, 43. The circuit court should ascertain that: “(1) the defendant is aware of his or her right to testify and (2) the defendant has discussed this right with his or her counsel.” *Id.*, ¶43.

The circuit court conducted the following colloquy with Wilder and his attorney regarding Wilder’s right to testify at trial on his own behalf:

THE COURT: Okay. Have you and your client had time to talk about the decision whether or not to testify?

ATTORNEY EPPS: Yes, Judge, we have.

THE COURT: And will your client testify?

ATTORNEY EPPS: No, Judge.

THE COURT: Mr. Wilder, do you understand that it’s your decision whether or not to testify in this case?

THE DEFENDANT: Yes, sir.

THE COURT: Have you had enough time to talk to your attorney about it?

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions of either your attorney or me about this decision not to testify?

THE DEFENDANT: No, sir.

THE COURT: Do you understand you're giving up your chance to tell the jury your side of the story?

THE DEFENDANT: Yes, sir.

THE COURT: And how old are [you], Mr. Wilder?

THE DEFENDANT: I'm 22 years old.

THE COURT: And how far did you go in school?

THE DEFENDANT: I finished the eleventh grade.

This colloquy establishes that Wilder knew that he had a right to testify, and intentionally relinquished that right after discussing the matter with his lawyer. *See id.*, ¶40 (a defendant who chooses not to testify must intentionally relinquish his or her right to do so). Wilder suggests that the circuit court was required to “provide a significant explanation [of] the constitutional right.” The circuit court’s colloquy goes beyond the standards established by the Wisconsin Supreme Court in *Weed*, and was more than sufficient to alert Wilder that he could testify before the jury. Therefore, we reject Wilder’s argument that he is entitled to a new trial because his decision to waive his right to testify was not knowingly, intelligently, and voluntarily made.

Accordingly,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*