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DISTRICT I

August 20, 2019

To:

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You are hereby notified that the Court has entered the following opinion and order:

2018AP1002

State of Wisconsin v. Miguel Muniz-Munoz (L.C. # 2004CF3425)

Before Kessler, Dugan and Reilly, 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).

Miguel Muniz-Munoz, *pro se*, appeals the circuit court's order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2017-18).¹ He argues that he received constitutionally ineffective assistance from his trial attorney because his trial attorney failed to file a motion to suppress his confession, and that his appellate counsel was ineffective

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

for failing to raise the issue on direct appeal. After review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

The circuit court's written decision properly analyzes and disposes of the issue raised by Muniz-Munoz's motion. Therefore, we affirm based on the portion of the circuit court's opinion set forth below. *See* WIS. CT. APP. IOP VI (5)(a) (Nov. 30, 2009).

In his current motion, the defendant alleges that police arrested him at his mother's house without probable cause and without a warrant and that trial counsel was ineffective for failing to file a motion to suppress his confession based on an illegal arrest. The court rejects the defendant's claim that the officers lacked probable cause. Police have probable cause to arrest if they have "information which would lead a reasonable police officer to believe that the defendant probably committed a crime." *West v. State*, 74 Wis. 2d 390, 398 (1976). In this instance, the statement made by Díaz-Luna on June 26, 2004, implicating the defendant as one of the shooters, plainly provided the officers with probable cause for his arrest. Even assuming that the defendant's in-house arrest was unlawful because it was executed without a warrant, the court is persuaded by the Supreme Court's decision in *State v. Felix*, 339 Wis. 2d 670 (2012), adopting the rule in *New York v. Harris*, 495 U.S. 14 (1990). In *Felix*, police had probable cause to arrest the defendant for homicide but did not obtain a warrant for his arrest. Police arrested the defendant at his home, and he was charged with a homicide. Before trial, the defendant sought to suppress statements and evidence that police obtained at the police station and the jail. In affirming the circuit court's decision denying the defendant's suppression motion, the court held that where police had probable cause to arrest before the unlawful entry, a warrantless arrest in the home requires neither the suppression of statements made outside the home after an arrestee was given and waived his or her *Miranda* rights nor the suppression of physical evidence obtained outside the home.

Felix is dispositive in this case. In this instance, police had probable cause to arrest the defendant based on Díaz-Luna's statement identifying him as one of the shooters. After the police arrested the defendant at his mother's home, he was transported to the jail where he was interrogated over the course of four sessions. The police read the defendant his *Miranda* rights at the beginning of each session. He told the detectives that he understood his rights and that he was willing to give up his rights to talk to them. Because the defendant's statements were made outside his home and after he was given and waived his

Miranda rights, they were admissible despite the warrantless home arrest. Consequently, trial counsel was not ineffective for failing to pursue a suppression motion on this basis (parenthetical information omitted).

Moreover, we agree with the circuit court that Muniz-Munoz's suppression argument is not clearly stronger than the issues that appellate counsel previously raised on appeal, and therefore, Muniz-Munoz's claim fails. *See State v. Romero-Georgana*, 2014 WI 83, ¶¶45-46, 360 Wis. 2d 522, 849 N.W.2d 668 (stating that to prevail on an ineffective assistance of appellate counsel claim a defendant must show that the issues he believes appellate counsel should have raised on direct appeal are clearly stronger than the issues counsel did raise).

Upon the foregoing,

IT IS ORDERED that the order 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.

Sheila T. Reiff
Clerk of Court of Appeals