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**DISTRICT I/II**

January 6, 2021

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

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2018AP1800-CRNM      State of Wisconsin v. Robbie L. Fields (L.C. #2015CF1126)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**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).**

Robbie L. Fields appeals from a judgment convicting him of first-degree reckless homicide contrary to WIS. STAT. § 940.02(1) (2015-16).<sup>1</sup> Fields' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and *Anders v. California*, 386 U.S.

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

738 (1967). Fields filed two responses to counsel's no-merit report, counsel filed a supplemental no-merit report, and Fields filed a response to the supplemental no-merit report.<sup>2</sup> Upon consideration of the no-merit reports and Fields' responses, and after an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21 (2017-18).

The no-merit and supplemental no-merit reports and Fields' responses address the following possible appellate issues: (1) ineffective assistance of trial counsel for failure to investigate a matter involving the location where the victim's identification card was found, failure to challenge the bindover after the preliminary examination, failure to request the victim's mental health records, failure to seek suppression of the confession Fields gave after he approached a police officer in the street, deficient cross-examination of witnesses, including Kayla G., failure to assert either self-defense or a defense arising under the castle doctrine, failure to call numerous witnesses, failure to object to certain testimony Fields characterizes as false, failure to offer ballistics evidence, failure to introduce evidence that Fields' DNA was not found on the victim's face, and failure to exercise a peremptory strike against an allegedly biased juror; (2) sufficiency of the evidence; (3) proceedings at trial including jury selection, Fields' waiver of his right to testify, the jury instructions, and closing arguments; (4) whether there was newly discovered evidence relating to witness Kayla G.; (5) numerous miscellaneous claims including a violation of the right to a speedy trial, deprivation of a fair trial under the Fourteenth

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<sup>2</sup> The submissions in this appeal are extensive: eighty-nine pages of no-merit and supplemental no-merit reports from counsel and fifty-two handwritten pages over three responses from Fields.

Amendment, claims that witnesses lied at trial, the admission of allegedly irrelevant evidence at trial, and evidence allegedly withheld by the State; and (6) whether the circuit court misused its sentencing discretion.<sup>3</sup>

After reviewing Fields' responses and the record, we conclude that counsel's no-merit reports properly analyze the issues they address and correctly determine that these issues lack arguable merit for appeal. This opinion addresses only the larger issues in the case.

We address the following issues: (1) sufficiency of the evidence; (2) ineffective assistance of trial counsel for his handling of witness Kayla G., failure to argue either self-defense or a castle doctrine defense to the jury, failure to request the victim's mental health records, and failure to seek suppression of Fields' in-custody statement; and (3) sentencing.

To address the sufficiency of the evidence, we review whether the evidence, viewed in the light most favorable to the State, "is so insufficient in probative value and force that" as a matter of law, no reasonable jury could have found guilt beyond a reasonable doubt. *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752, 755 (1990). The standard is the same whether the evidence is direct or circumstantial. *See id.* It was the jury's function to decide issues of credibility, weigh the evidence and resolve conflicts in the testimony. *Id.* at 506. We must accept the reasonable inferences drawn from the evidence by the jury. *Id.* at 506-07. If more than one reasonable inference can be drawn from the evidence, we must accept the inference drawn by the jury. *Id.* at 506.

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<sup>3</sup> To the extent we have not listed an issue discussed in either the no-merit reports or Fields' responses, that issue has been rejected due to lack of arguable merit based on counsel's no-merit reports, the record and Fields' responses. *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

The record reveals that more than one witness gave testimony that supported the elements of the crime. At trial, Fields denied shooting the victim. Trial counsel argued that someone else shot the victim and ran out the back door of Fields' residence, where the shooting occurred. The direct and circumstantial evidence adduced at trial shows that on the day of the shooting, the witnesses, defendant, and the victim all knew each other, Fields displayed a firearm at the scene, he and the victim had a physical altercation, the victim fled into Fields' apartment, Fields followed him, gunshots were heard, Fields' bedroom door was damaged by gunshots, shell casings were found inside and outside of the bedroom, the victim was found dead of gunshot wounds in Fields' bedroom, Fields fled the scene after the shooting, and, two days later, Fields approached a police officer on State Street and confessed to being involved in the shooting (the "State Street confession"). The direct and circumstantial evidence adduced at trial permitted the jury to reasonably infer that Fields shot the victim, and we cannot say that the jury erred in finding guilt beyond a reasonable doubt.

In his responses to counsel's no-merit reports, Fields challenges the testimony of most witnesses as lacking credibility or consisting of falsehoods. He argues that counsel failed to effectively cross-examine or impeach witnesses.<sup>4</sup> Each witness for the State was cross-examined by trial counsel and inconsistencies in their testimony and statements were explored. As stated, it was the jury's function to decide issues of credibility, to weigh the evidence and resolve conflicts in the testimony. See *Poellinger*, 153 Wis. 2d at 506. Our review of the record reveals

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<sup>4</sup> In so arguing, Fields has run a fine sieve through the record to argue every possible inconsistency within a witness's trial testimony and between the testimony and official reports or statements to police.

that no witness testimony was incredible as a matter of law such that it should be disregarded by this court. *State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989).<sup>5</sup>

We conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence or the credibility of the witnesses.

We turn to Fields' ineffective assistance of trial counsel claims. To succeed on an ineffective assistance of counsel claim, a defendant must demonstrate that counsel's representation was deficient and that the deficiency was prejudicial. *State v. Jeannie M.P.*, 2005 WI App 183, ¶6, 286 Wis. 2d 721, 703 N.W.2d 694. We need not consider whether trial counsel's performance was deficient if we can resolve the ineffectiveness issue on the ground of lack of prejudice. See *State v. Sanchez*, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996). To establish prejudice, "the defendant must affirmatively prove that the alleged defect in counsel's performance actually had an adverse effect on the defense." *State v. Reed*, 2002 WI App 209, ¶17, 256 Wis. 2d 1019, 650 N.W.2d 885. The defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (citation omitted). In assessing prejudice, we consider the totality of the circumstances before the trier of fact. *Sanchez*, 201 Wis. 2d at 236.

First, Fields alleges ineffective assistance in relation to Kayla G.'s testimony. Kayla G. knew Fields, and she and the victim shared a child. She testified that while sitting in her parked

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<sup>5</sup> For this reason, we do not discuss each witness's testimony or Fields' complaints about the testimony.

vehicle in front of Fields' residence, she observed Fields and the victim on the porch. Before their physical confrontation started, she saw the defendant display a firearm to the victim by pointing it in the air, she witnessed the ensuing fight, she saw the victim run into Fields' apartment, she saw Fields follow the victim into the apartment, she heard the gunshots shortly thereafter, and she saw Fields leave the residence and drive away. Kayla G. called 911. Kayla G. was cross-examined about her vantage point, when she saw the defendant's firearm, and how many shots she heard.

Fields complains that his trial counsel was ineffective because he failed to cross-examine Kayla G. with evidence of her pending criminal charges for harboring or aiding a felon by hiding a firearm during a police investigation involving a male acquaintance. In that matter, the criminal complaint against Kayla G. was filed two days before the shooting in the Fields case, and the charges remained unresolved at the time of Fields' trial. Fields argues that the pending criminal charges bore upon Kayla G.'s credibility and demonstrated her willingness to take steps to protect another and to fabricate her testimony that Fields was involved in the shooting of her child's father.

As appellate counsel discusses, Kayla G. was not the only witness who tied Fields to the shooting. Two other witnesses testified to many of the same events. And, most importantly, two days after the shooting, Fields approached an officer on State Street and confessed to the shooting. Assuming without deciding that trial counsel could have impeached Kayla G. with evidence of the pending criminal charges against her, we agree with appellate counsel that Fields cannot show prejudice arising from counsel's failure to do so. Given the totality of the circumstances before the trier of fact, *id.* at 236, there was no reasonable probability that Fields

would have been acquitted had Kayla G. been impeached with her pending criminal charges. *Reed*, 256 Wis. 2d 1019, ¶17.

Second, Fields alleges ineffective assistance of trial counsel because the evidence adduced at trial warranted arguing self-defense and the castle doctrine defense to the jury. At trial, Fields argued that someone else shot the victim. On appeal, Fields continues to deny that he shot the victim.<sup>6</sup> Trial counsel did not explicitly argue either self-defense or castle doctrine to the jury, although during his closing argument, counsel referred to the fight that preceded the shooting and implied that the victim had been the aggressor.<sup>7</sup>

We conclude that Fields' ineffective assistance of trial counsel claim fails because in order to assert self-defense or castle doctrine, Fields would have had to admit that he shot the victim to put before the jury the requisite predicate conduct for each defense, i.e., that his belief regarding the use of force was reasonable or that his use of force was justifiable to defend himself from the victim's entry into his home. *State v. Chew*, 2014 WI App 116, ¶1, 358 Wis. 2d 368, 856 N.W.2d 541 (castle doctrine "generally provides that use of force is presumably justified when a person is defending himself ... against an unlawful and forcible intruder in that person's home"); *State v. Stietz*, 2017 WI 58, ¶15, 375 Wis. 2d 572, 895 N.W.2d 796 ("[a] jury must be instructed on self-defense when a reasonable jury could find that a prudent person in the position of the defendant under the circumstances existing at the time of the incident" could have reasonably believed that the threat or use of force was necessary to

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<sup>6</sup> Fields does not allege that his trial counsel declined to present at trial an admission that he shot the victim.

<sup>7</sup> The criminal charges against Fields were for the shooting, not the fight.

terminate an unlawful interference with the defendant's person). Because Fields' claim that someone else shot the victim ruled out both self-defense and the castle doctrine defense, trial counsel cannot be faulted for failing to argue these defenses to the jury.<sup>8</sup> See *State v. Simpson*, 185 Wis. 2d 772, 784, 519 N.W.2d 662 (Ct. App. 1994) (counsel cannot be faulted for failing to take action that would have been unsuccessful). Fields' ineffective assistance of trial counsel claim lacks arguable merit for appeal.

Third, Fields alleges that trial counsel was ineffective because he did not request the victim's mental health records. Counsel's no-merit report advises that trial counsel could not develop a sufficient basis for a *Shiffra/Green*<sup>9</sup> motion seeking access to the victim's mental health records. We agree with appellate counsel that because Fields did not pursue either self-defense or a castle doctrine defense at trial, whether the victim had mental health issues and violent tendencies was not relevant. Fields cannot show that he was prejudiced by trial counsel's failure to request the records. This issue lacks arguable merit for appeal.

Fourth, Fields complains that trial counsel did not move to suppress the in-custody police department statement he gave after he confessed to an officer on State Street and was arrested.<sup>10</sup> In his response to the no-merit report, Fields informs the court that he received and waived his

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<sup>8</sup> We reject Fields' claim that his trial counsel should have offered an adequate provocation defense. An adequate provocation defense is only available when a defendant is charged with first-degree intentional homicide. WIS. STAT. § 939.44(2).

<sup>9</sup> See *State v. Shiffra*, 175 Wis. 2d 600, 608, 499 N.W.2d 719 (Ct. App. 1993), *abrogated in part on other grounds by State v. Green*, 2002 WI 68, ¶32, 253 Wis. 2d 356, 646 N.W.2d 298.

<sup>10</sup> Because Fields approached the police officer on State Street and confessed to the shooting, we agree with appellate counsel that there was no basis to seek suppression of the confession.



*Miranda*<sup>11</sup> rights during his in-custody interview. However, he claims that during the interview, the law enforcement officer failed to honor his request for counsel. According to what appears to be Fields' handwritten transcription of his interview, after Fields asked for counsel, the interviewer did not ask any more substantive questions. As best as we can tell, Fields' claim that his request for counsel was not honored rests upon the fact that counsel had to be arranged and did not appear on-the-spot. Regardless of the basis for the claim, we conclude that any issue relating to Fields' in-custody statement would lack arguable merit for appeal for the following reasons: Fields did not testify, neither the State nor Fields elicited at trial any testimony about Fields' statement, and Fields' own recitation of the interview does not suggest any deprivation of rights. Fields cannot show prejudice arising from the failure to challenge his in-custody statement.

Finally, we consider the sentencing. We agree with appellate counsel that the circuit court engaged in a proper exercise of sentencing discretion after considering various sentencing factors. *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (we review the sentence for a misuse of discretion); *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (sentencing objectives and factors discussed). The circuit court properly granted 210 days of sentence credit.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any arguably meritorious issue for

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<sup>11</sup> *Miranda v. Arizona*, 384 U. S. 436 (1966).

appeal.<sup>12</sup> Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit reports, affirm the judgment of conviction and relieve Attorney Jeffrey Jensen of further representation of Fields in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2017-18).

IT IS FURTHER ORDERED that Attorney Jeffrey Jensen is relieved of further representation of Robbie L. Fields in this matter.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>12</sup> For this reason, we reject Fields’ request for a discretionary reversal. “Larding a final catch-all plea for reversal with arguments that have already been rejected adds nothing.” *State v. Echols*, 152 Wis. 2d 725, 745, 449 N.W.2d 320 (Ct. App. 1989).

