



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

March 14, 2023

To:

Hon. Michael A. Schumacher
Circuit Court Judge
Electronic Notice

Susan Schaffer
Clerk of Circuit Court
Eau Claire County Courthouse
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Gary King
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Joel K. Larimore
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You are hereby notified that the Court has entered the following opinion and order:

2021AP680-CR State of Wisconsin v. Craig K. Schummer (L. C. No. 2017CF552)

Before Stark, P.J., Hruz and Gill, 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).

Craig Schummer challenges the circuit court's decision and order denying his postconviction motion without a *Machner*¹ hearing. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2021-22).²

¹ *See State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Schummer was convicted, following a jury trial, of substantial battery and disorderly conduct after he punched the victim in the face, breaking her nose and several other facial bones. Schummer's main defense at trial was that he did not strike the victim with intent to cause bodily harm, a required element of substantial battery under WIS. STAT. § 940.19(2). Schummer maintained that the victim attacked him first, and her injury must have been caused by either her own knee when she fell or by him accidentally hitting her face with a glancing blow.

Following his conviction, Schummer filed a motion for postconviction relief, alleging ineffective assistance for his counsel's failure to object to the introduction of one of three photographs relating to his involvement in martial arts.³ Specifically, Schummer objected to trial Exhibit 19, which is a photograph of Schummer in his martial arts uniform holding two martial arts weapons. The circuit court denied the postconviction motion without an evidentiary hearing, concluding that Schummer was not prejudiced by any alleged deficient performance.

We agree with the circuit court that Schummer's postconviction motion falls short of alleging sufficient facts that demonstrate prejudice. *See State v. Allen*, 2004 WI 106, ¶19, 274 Wis. 2d 568, 682 N.W.2d 433. Schummer's motion merely asserted that Exhibit 19 led the jury to see him as "the angry looking man in the fighting uniform with weapons."

In his briefs to this court, Schummer argues Exhibit 19 is objectionable because it portrays him scowling and holding a weapon, which "appeals to [the jury's] emotions and is designed to make him appear intimidating and aggressive, more frightening, and thus more likely

³ In his postconviction motion, Schummer also sought a new trial in the interest of justice or due to plain error. Schummer has abandoned these arguments on appeal. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998).

to intentionally strike the victim.” However, Schummer fails to consider the totality of the evidence before the jury. *See State v. Maday*, 2017 WI 28, ¶58, 374 Wis. 2d 164, 892 N.W.2d 611. As the circuit court noted, “Exhibit 19 was not admitted into evidence in a vacuum.”

There was no dispute at trial that Schummer was involved in martial arts. The victim testified on cross-examination that Schummer was a trained martial artist. The State introduced Exhibits 17, 18, and 19 during redirect examination of the victim. Exhibit 17 was a series of pages from a martial arts school website, depicting instructors and students. A significant number of the photographs in Exhibit 17 showed instructors holding weapons, including Schummer. Schummer was depicted under the heading “Land Shark Martial Arts Head Instructor.” Exhibit 18 was a single photograph taken from Exhibit 17, showing Schummer wearing his martial arts uniform adorned with the school’s logo while holding a sword. Exhibit 19 was another photograph of Schummer in the same martial arts uniform holding two smaller weapons.

Schummer does not adequately explain how there would be a reasonable doubt as to his guilt absent Exhibit 19, given that he does not challenge Exhibits 17 or 18, which also depicted Schummer in a martial arts uniform holding a weapon. Exhibit 19 was not utilized to villainize Schummer, nor was it used to demonstrate that Schummer had a propensity toward violence. The photographs did not depict Schummer actually fighting anyone, using the weapons he held, or acting in an aggressive manner. In addition, the State did not ask about Schummer’s pose in the photographs, the weapons he was holding, or any weapons training that Schummer had received. The record reveals that the State referenced the three exhibits merely to confirm Schummer’s identity in the photographs from the martial arts school. We are not persuaded that the inclusion of Exhibit 19 adversely affected Schummer’s defense so as to render counsel’s

performance unconstitutionally prejudicial, given that the jury also viewed Exhibits 17 and 18, which Schummer does not claim were objectionable.

Perhaps more importantly, the jury heard testimony from the surgeon who operated on the facial injuries to the victim. He confirmed the magnitude of her injuries, testifying that she had “multiple fractures[] of the nasal bones on both sides.” He concluded, “This is not something that ... a normal, healthy woman would get from, like, falling from standing or anything like that.” He opined that the facial fractures required an “extremely forceful blow.” He rejected the suggestion that the injuries were caused by a glancing blow, stating, “Like I said, this would be a direct hit that had a lot of force behind it.” Moreover, an officer dispatched to the scene testified that Schummer had blood on his knuckles. This testimony critically undercuts Schummer’s contention that he accidentally hit the victim in the face with a glancing blow or that she fell on the floor and struck her face with her own knee.

Accordingly, the admission of Exhibit 19 does not undermine our confidence in the outcome of the trial. See *State v. Sholar*, 2018 WI 53, ¶45, 381 Wis. 2d 560, 912 N.W.2d 89. The circuit court properly denied Schummer’s postconviction motion without a *Machner* hearing. Because Schummer failed to show prejudice, we need not reach the issue of whether counsel’s performance was deficient. See *Maday*, 374 Wis. 2d 164, ¶54.

Upon the foregoing,

IT IS ORDERED that the judgment and order are summarily affirmed. 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