

sentences, and whether a new trial is warranted in the interest of justice. Phillips has filed a response to the no-merit report raising multiple, interrelated claims of ineffective assistance of counsel and prosecutorial misconduct, in addition to discussing many of the issues addressed by counsel. Petersen has filed a supplemental no-merit report addressing some of Phillips' additional claims, to which Phillips has filed a reply. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal. Accordingly, counsel will be allowed to withdraw, and the judgment shall be summarily affirmed.

BACKGROUND

The complaint alleged that Phillips, as a party to a crime and as a repeat offender, recklessly caused the death of Marcus Holton by "hitting, punching and kicking" Holton multiple times after Jennifer Mustache told Phillips that Holton had inappropriately touched one of Mustache's children.

Prior to trial, Phillips' trial counsel successfully moved to exclude DNA evidence that had not been timely disclosed and to prohibit any references to Phillips' tattoos or gang affiliation. During a conference in chambers, the circuit court also granted Phillips' motion to exclude a crime scene photograph, Exhibit 52, as unduly prejudicial. The court denied Phillips' additional motions to suppress statements that Phillips had made to the police and to dismiss the homicide charge.

During voir dire, panel member McBain disclosed that her fiancé's uncle worked for the Ashland Police Department. McBain affirmed that there was nothing about the relationship that would prevent her from making a decision based on the facts of the case and that she had no

problem being on a jury where other members of the police department would be testifying. Panel member Bretting disclosed that his secretary was married to one of the detectives in the case, and that his son-in-law's father was also a police officer. Bretting said that he did not socialize with the detective and affirmed he would have no issue with the detective being a witness in the case. Both McBain and Bretting were seated on the jury.

At trial, the State first called Holton's father to identify him as the victim. Next, Ashland Police Sergeant Jodene Janesec testified that she received a dispatch call requesting a welfare check on an individual who may have been stabbed at Mustache's residence in Ashland. David McGuire, who managed the dispatch center for the Ashland County Sheriff's Office, and Beverly Crowe each authenticated a 911 call that Crowe made, which was subsequently played for the jury. Phillips raised a hearsay objection to statements made by others that Crowe relayed during the call. The circuit court overruled the objection, accepting the State's assertion that the statements in the 911 call were not being offered for the truth of the matters asserted therein, but as an explanation for why the subsequent dispatch call was made.

Crowe testified that her daughter, Darlene Ramirez, and Taylor Pero had told her to call 911 and send police to an address that Crowe could no longer recall. Crowe said that Ramirez and Pero did not tell her the reason for the request, other than it was "[s]omething about a guy named John, or John-John."

Janesec responded to the dispatch call with other law enforcement officers and discovered Holton's unresponsive body covered in what appeared to be blood. After determining that Holton was deceased, Janesec and the other officers secured the scene and contacted the coroner.

Wisconsin State Crime Laboratory (Crime Lab) employee Jace Klimeck testified that he documented the crime scene with over 400 photographs and a twenty-one-minute video. The State introduced a series of those photographs showing multiple injuries to Holton's body and apparent blood stains throughout the room where the body was found. Three of the photographs depicted glass fragments in wounds on Holton's face. In addition, some of the photographs showed latent fingerprints from the scene that had been enhanced with blue dye to highlight ridge details. The State also played a substantial portion of the crime scene video for the jury.

During the playback, a section of the crime scene video displayed substantially the same close-up image of Holton as that depicted in the excluded photograph, Exhibit 52. The State immediately stopped the video. Phillips moved for a mistrial. The circuit court denied the motion, reasoning that "there is a difference between a fleeting video image, and a photo which the jury dwell[s] over."

Another Crime Lab employee, Kattie Hoffmeyer, testified that she marked and directed the collection of multiple items of physical evidence from the crime scene. Among the items Hoffmeyer arranged to have collected were a BB gun, a pink or purple-handled folding knife, a silver-and-black folding knife, a broken glass bottleneck from a rum bottle, and a broom handle. All of these items were stained with a red substance.

Ashland Police Department Investigator Mark Campy testified that he took custody of the evidence collected from the crime scene, as well as a white-handled straight-blade knife that was seized from the trunk of the car Phillips occupied at the time of his arrest, and a bolt that was recovered from Holton's rectum during his autopsy. The parties entered a stipulation as to the

chain of custody of these items. None of the three knives in police custody were submitted to the Crime Lab.

Crime Lab employee Wendy Adams examined the latent prints in photographs and on items recovered from the crime scene. Adams identified Phillips' palm and fingerprints in photographs of a door in Mustache's house, on the broom handle, and on the broken bottleneck.

Doctor Vincent Tranchida, a chief medical examiner, board certified as a forensic pathologist, conducted an autopsy on Holton. Tranchida determined Holton's cause of death to be "cardiac arrest following a physical assault with multiple blunt and sharp-force injuries, in a setting of acute methamphetamine intoxication." Tranchida cataloged six puncture wounds to Holton's head, ten incised cuts to Holton's face, three incised cuts to Holton's neck, twenty incised cuts to Holton's upper extremities, two stab wounds to Holton's shoulder and elbow, and more than a dozen blunt-force abrasions, contusions, and lacerations concentrated around Holton's head and upper body.

Tranchida testified that contusions and hemorrhaging under Holton's scalp and on the surface of his brain indicated that a "considerable" or "great" amount of force was used to inflict blunt-force trauma to Holton's head. In Tranchida's opinion, the brain hemorrhages were "potentially life threatening" in and of themselves.

Tranchida found fragments of broken glass during his external examination of Holton's body, and he testified that the broken bottle top recovered from the scene was the "type of instrument" that could have made the incised cuts on Holton's body. Tranchida further noted that a heavy glass bottle was capable of causing blunt-force trauma before being broken.

Tranchida did not find any specific pattern of injury on Holton's body that correlated to the BB gun, but he testified that there were surfaces on the gun that had the "potential" for the application of blunt force. Tranchida testified that the red stains depicted in the pictures of the BB gun were "suggestive of dried blood." Tranchida also testified that the stab wounds to Holton's shoulder and elbow could "potentially" have been caused by a knife or "any other object with a similar configuration." Tranchida opined that the stab wounds (which missed any major arteries) could have been survivable in and of themselves but that there was "no such thing as a safe stab wound." Tranchida further observed that two pairs of "pattern" bruises were "suggestive" of bite marks and that some of the injuries to Holton's hands were consistent with defensive wounds. Finally, Tranchida found that a gray metal bolt had been fully inserted into Holton's rectum.

Tranchida stated that the extensive amount of hemorrhaging beneath Holton's injuries indicated that Holton was alive when the injuries were inflicted. Tranchida observed that the sheer number of injuries on Holton's body, resulting from dozens of impacts, indicated that the assault occurred over an extended period of time. Given the density of blood vessels in the scalp and the amount of time the assault lasted, Tranchida determined that Holton would have suffered a "great deal of blood loss" from his head wounds, in particular. Tranchida concluded:

In this case I believe the trauma sustained by the decedent was a significant contributor to the cause of cardiac arrest. He was bleeding profusely from these many injuries. This would have caused him to go into hypovolemia, or lack of blood within the circulation. In addition, he has [a] traumatic brain injury as well. These impacts to the brain can also cause cardiac arrest. Furthermore, he has sustained these injuries in the setting of an acute methamphetamine intoxication. Methamphetamine is a stimulant drug in the body. Its side [e]ffects include cardiac eurhythmias, especially in setting[s] of extreme exercise, and

extreme stress. I would categorize medically the extent, number, distribution, and severities of his injuries as extreme stress.

Tranchida further noted that it was not unusual for traumatic injuries to trigger a cardiac arrest. He then offered his opinion that the injuries Holton suffered “from a physical assault” created a great risk of death or great bodily harm and were a substantial factor in producing Holton’s death.

After speaking with several witnesses, Lieutenant Scott Morland of the Ashland Police Department obtained arrest warrants for Phillips and Mustache. Morland interviewed Mustache the day after Holton’s death and interviewed Phillips the following day. During his interview with Phillips, Morland observed and photographed injuries to Phillips’ head, hands and legs. Morland authenticated a video of Phillips’ custodial interview, which was played for the jury.

Phillips told Morland that he had driven to Mustache’s house with his roommate and another man after he spoke on the phone with Mustache and “heard about [Mustache’s] daughter.” Phillips said he found Holton “on top of” Mustache and “didn’t know if [Holton] was gonna rape [Mustache].” Phillips remembered “fighting” with Holton “from one side of the room to the other,” but he said that he blacked out and could not give a “play-by-play call” of what happened. When Phillips regained consciousness after blacking out, Holton was trying to grab his leg, leaving scratch marks. Phillips claimed to have no memory of using a knife or a broom on Holton. The last thing Phillips remembered was Holton “grabbing [Phillips’] leg over by the front door” before Phillips went upstairs with blood all over his clothes. Phillips said that Holton was not dead when he left him, and that he did not learn that Holton had died until Mustache told him, about two hours later.

On the morning of the second day of trial, the State informed the circuit court in chambers that it had been advised late the prior day “by a witness who did not have direct personal knowledge” that Jessica Barry had indicated to others that she had participated with Phillips “and potentially others” in the assault on Holton. In addition, the State had learned that morning that Barry was subject to an emergency detention because she had attempted to take her own life. The State informed the court that it was investigating the allegations and would provide the defense with any additional information it learned as soon as possible. There is nothing further in the record showing who either the informant or the people to whom Barry allegedly made such inculpatory statements were, or what the results of the State’s investigation were. Later that day, Barry appeared in court. She admitted that she had been served a subpoena while she was in the hospital “for an evaluation” but denied that she had threatened to hurt herself.

Barry testified that she, Holton, and Tahnee White were staying at Mustache’s house on the weekend that Holton was killed. At some point earlier in the day before the assault, Mustache told Barry that Holton was going to “get his ass whooped,” but Barry said she wanted “no part in it.” Barry was sleeping upstairs when she was awakened by a loud bang. Barry came downstairs and saw both Phillips and Mustache punching Holton on the floor near a mattress. Barry tried to pull Phillips off of Holton, but Phillips turned around and punched her. Mustache “jumped in the middle,” told Phillips to stop, and told Barry to get White and leave, while Phillips “went back to” Holton. Barry got White, and they left the house to look for two dogs. Barry eventually found one of the dogs, returned to the house, and gathered outside near Mustache’s car with White, Phillips and Mustache.

While in the yard, Barry saw Jen Nelis walk up and enter the house. Nelis came out of the house “yelling that [Holton] was dead.” Barry then got into a car owned by Daniel Mecikalski with Phillips, Mustache, White, and Nelis, and they all left the scene. Barry argued with Phillips in the car because Phillips wanted everyone to leave town together, and Barry wanted to stay. Phillips warned Barry to “not say nothing” and made “insinuations” that her family or loved ones could get hurt. After dropping Nelis off and making several other stops, Phillips, Mustache, Barry and White drove to the house of Jessica Gordon. Mustache argued with Phillips in Gordon’s house because Mustache wanted to go back to her house and Phillips wanted her to go to Spooner with him. Barry saw that Phillips “had [Mustache] up against the wall” with a knife, and was yelling at her.

Mecikalski testified that Phillips lived in a cabin in Barnes on property owned by Mecikalski’s mother. Mecikalski drove Phillips and Lester Gates from Barnes to Mustache’s house in Ashland on the day of the assault after Phillips spoke on the phone with Mustache. Phillips asked Mecikalski to stay in the car while Gates got Mustache’s children out of the house. Mecikalski drove the children and Gates to a Burger King, where they were captured on surveillance video. After they ate, Mecikalski drove everyone back to Mustache’s house to pick up jackets for the children. Gates went into the house but came out without the jackets and said “let’s get out of here.” Mustache, who was outside the house at that time near her car, asked to switch cars with Mecikalski because her car had only one working headlight. Mecikalski eventually drove back to his mother’s house in Mustache’s car with Gates and the children.

Gates, who lived with Phillips on the Mecikalski property, corroborated Mecikalski’s testimony about overhearing Phillips on the phone with Mustache, accompanying Phillips to Mustache’s house to pick up Mustache’s children, and taking the children to Burger King. Gates

further testified that, prior to going to Mustache's house, Phillips purchased a bottle of rum. Inside Mustache's house, Gates saw Mustache point out a man Gates did not know to Phillips, whereupon Phillips made a "beeline" toward the man and Mustache. As Gates was leaving with the children, he heard someone make an "afraid, scared, like sound" that "wasn't quiet, but ... wasn't a total scream."

When Gates later re-entered Mustache's house to get the children's jackets, he saw a body on the floor that he immediately believed to be dead. There was a towel on the body's head, and Mustache was attempting to perform CPR. Gates went upstairs and found Phillips without a shirt on, with blood on his pants. Phillips told Gates that he "beat that mother fucker down." After Nelis came into the house and started "screaming and freaking out," Gates left with Mecikalski and the children in Mustache's car.

Gates also testified that Phillips had a collection of knives. Gates identified a white-handled knife that police had recovered from the trunk of Mecikalski's car and the pink or purple-handled folding knife recovered near Holton's body as being among Phillips' favorite knives. Gates also believed that the silver-and-black-handled folding knife and a BB gun found near Holton's body belonged to Phillips. Gates saw Phillips put the white-handled knife in his coat pocket before they drove to Mustache's house.

Gordon testified that when Phillips, Mustache, Nelis, and White came to her house that evening, she told them she had been trying to reach Holton, but they did not say anything about where Holton might be. Later on, Gordon heard Phillips and Mustache arguing in the bathroom, and Gordon saw that Phillips was bleeding from a cut on his hand.

Mustache pled guilty to a charge of felony murder arising from Holton's death and agreed to testify truthfully at Phillips' trial as a condition of her plea agreement. Mustache testified that Phillips was the father of one of her four children. After Mustache moved out of a cabin where she had been living with Phillips, Mustache began dating Holton, and Holton came to stay with Mustache in Mustache's rented house. On the day of Holton's death, one of Mustache's daughters told Mustache that Holton had awoken her in the middle of the night giving her a "butt massage." Mustache said she called Phillips, told him about her daughter's allegation, and asked if she and the children could come stay with him.

Several hours later, according to Mustache, Phillips showed up at Mustache's house with a BB gun in his hand and "went after" Holton. Holton "dove underneath" a futon attempting to evade Phillips. Phillips pulled the mattress off the futon and began punching and hitting Holton with the gun through the futon frame. While Phillips was attacking Holton, Mustache went upstairs to tell Barry and White that Phillips was there with a gun and also went outside to look for her children. When Mustache came back inside, she and Barry tried to stop Phillips from attacking Holton, but Phillips punched Barry. Mustache saw Phillips hit, punch, and "jab" Holton "[t]oo many [times] to count ... [e]specially on the head." Mustache denied participating in the beating herself or asking Phillips to "take care of things."

After Phillips stopped beating Holton and went upstairs, Mustache found Holton still alive and "scrunched" near the front door in a fetal position. Mustache pulled Holton away from the door and laid him down on the ground because he was having difficulty breathing, making a "groggle" sound. Mustache also put a towel on Holton's head because it was bleeding so badly.

Mustache further testified that after Holton died, everyone drove off in two cars because Phillips “wanted to get out of town.” Mustache described Phillips as alternating between saying that he would take “full responsibility” for what happened and telling Barry and White to keep quiet. Phillips, Mustache, Barry and White eventually ended up at Gordon’s house. Mustache said Phillips held a knife to her throat in Gordon’s bathroom while they were arguing about whether Mustache would leave town with Phillips, which she eventually did. Mustache persuaded Phillips to drive to Duluth rather than Spooner. En route, they stayed overnight in Superior at the house of Steve Petruk, where they were arrested the following day.

At some point after they left Ashland but before they were arrested, Mustache and Phillips discussed using “a story” that Holton had been assaulting Mustache when Phillips entered Mustache’s house. Mustache admitted having told that story to police and that it was not true. Mustache said she did not call 911 because of Phillips’ “past histories with gangs and stuff.” The circuit court sustained an objection to Mustache’s references to “gangs[,]” but the defense chose not to seek a curative instruction in order to avoid drawing attention to the comment.

On cross-examination, Mustache admitted she told police she had made a comment to her daughter about wanting to “rape [Holton] with a broom handle” after learning that Holton had inappropriately touched her daughter. Mustache also acknowledged that she was alone in the room with Holton several times after Phillips left the room, but she denied that she had sodomized Holton. Mustache also denied cutting, kicking, or punching Holton and denied having told fellow jail inmates, Larissa Bratti and Marcella LaPointe, that she had “mutilated” Phillips.

Bratti testified for the defense that, while in jail, Mustache “was very boastful about being a notorious gangster” and “took a lot of credit for being a killer of [Holton].” According to Bratti, Mustache said that the killing was “very gruesome. That she was biting him, that bottles were used. That she did most of the killing.”

LaPointe testified for the defense that while she shared a jail cell with Mustache, Mustache told her that Holton “had touched her daughter that morning, and was dead by that evening” after Mustache got a friend “to bring her boyfriend up there from the City of Milwaukee.” According to LaPointe, Mustache also said she had spent six or seven hours consulting with “some lady [who had] come up from Appleton” about potentially raising a battered woman’s syndrome defense.

After a colloquy to ensure that Phillips understood his constitutional right not to testify, Phillips took the stand in his own defense. Phillips testified that he had helped to raise Mustache’s children, who considered him their father. Phillips stated that he went to Mustache’s house at her request and that he planned “to confront” Holton and to “beat him up.” When Phillips arrived, Mustache pointed Holton out to him, and Phillips then got “into a fight” with Holton and “[w]hooped him good.” Phillips acknowledged that he punched and kicked Holton “a lot” over a period of ten to thirty minutes and that he hit Holton over the head with a bottle during the assault, but he denied stabbing Holton with the broken bottleneck. Phillips also acknowledged that he owned one of the folding knives recovered from the murder scene and that he brought the white-handled knife and the BB gun with him that day, but he denied that he had stabbed Holton and could not remember if he hit Holton with the BB gun. Phillips further denied that he had placed either the bolt or the broomstick in Holton’s rectum. He said that his prints were on the broom handle from when he had helped Mustache clean the house.

Phillips agreed that he “might have swung at” Barry when she tried to intervene and that Mustache also might have attempted to intervene at one point. However, Phillips asserted that Mustache also punched and kicked Holton during the assault—although he did not mention that in his statement to the police. In addition, Phillips pointed out that Mustache went back into the house three or four times while Phillips was outside. Phillips said that he did not see Mustache with a knife at any point or notice any blood on her clothes after the assault.

Phillips stated that the “fight” ended when Phillips “got the better of” Holton and choked Holton unconscious by the couch. He testified that Holton was on his knees and regaining consciousness and grabbing Phillips’ leg as Phillips left the room to go upstairs. At that time, Holton “may have needed medical attention,” but he was not in such a condition that Phillips was concerned that Holton would die. Phillips claimed that he did not intend to kill Holton and that he had “no idea” how Holton obtained all of the injuries on his body.

Phillips acknowledged that he did not call 911. Phillips denied that Mustache or anyone else ever told him that Holton was dying or dead. Phillips heard Nelis “yelling” and “screaming” but claimed not to know what she was “raving about.” Phillips asserted that he wanted to go to Spooner to be with a girl he was seeing and he did not want to take Mustache with him. He denied having agreed to take responsibility for Holton’s death or having threatened anyone to keep quiet after the assault.

Following an off-the-record conference after the close of evidence, the circuit court stated on the record which jury instructions it would provide. Both parties stated that the identified instructions were acceptable to them. The instructions given to the jury did not include the definition of a “party to a crime” as set forth in WIS JI—CRIMINAL 400 (2005).

During closing argument, the prosecutor made several statements that summarized and characterized the evidence. These included statements that: (1) Tranchida’s opinion was that the beating Phillips inflicted on Holton caused Holton’s heart attack and was a substantial factor in his death; (2) Phillips “beat [Holton], and stabbed him, and jabbed him with sharp instruments”—including the glass bottleneck that could have caused a lot of Holton’s sharp-force injuries; (3) Phillips essentially admitted that he brought a knife into Mustache’s house when he testified that he used his knife “to get ... Holton’s attention”; (4) Phillips placed himself where “all the blood” was and where Holton was “primarily ... beaten, and he died[,]” whereas Phillips told Morland that Holton had grabbed Phillips’ leg by the front door and Phillips had kicked Holton away; and (5) the prosecutor was “pretty sure” that red marks on the front door depicted in crime scene photos were caused by Holton’s bloody fingers.

Early in his closing argument, Phillips’ lead defense attorney, Craig Haukaas, stated that Phillips was charged with first-degree intentional homicide, before subsequently arguing that Phillips was not guilty of reckless homicide. Although the circuit court instructed the jury on the lesser-included offense of second-degree reckless homicide, Haukaas did not argue that the jury should find Phillips guilty of the lesser-included offense. Instead, Haukaas argued that the State had failed to meet its burden of proof on any level of homicide.

The jury returned guilty verdicts on the charges of first-degree reckless homicide and two counts of bail jumping. At a subsequent hearing, the circuit court sentenced Phillips to twenty years’ initial confinement followed by twenty years’ extended supervision on the homicide count, with concurrent terms of three years’ initial confinement followed by three years’ extended supervision on the each of the bail jumping counts.

DISCUSSION

Phillips and Attorney Petersen do not discuss potential appellate issues in the same order in their submissions to this court. Because Phillips objects to the manner in which Petersen addresses the potential issues Phillips identifies, we will organize our discussion around Phillips' presentation of the issues he wishes to raise and incorporate Petersen's discussion of those and related issues into that framework as appropriate. We will then address several potential issues raised by Petersen that Phillips did not address. Any additional variations of these issues that we do not address we also deem to be without arguable merit, but insufficiently developed to warrant a separate discussion.

Additional Witnesses

Phillips first contends that his trial counsel, Haukaas, afforded him ineffective assistance by failing to interview and present the testimony of five potential witnesses who could have impeached Mustache—Judith Neusen, Rheannan Hoffman, Jasmine Connors, Julie Phillips, and Sasha Isham. Phillips believes that the first four witnesses would undermine Mustache's testimony that she never stabbed, cut or sodomized Holton, while the last witness would undermine the testimony of Mustache and Barry that Phillips was trying to persuade Mustache to go to Spooner with him following the assault.

Neusen worked for Ashland County Social Services. Phillips asserts that Neusen would testify that: (1) Mustache told Neusen that, after Phillips beat up Holton, Mustache could not stop thinking about what Holton had done to Mustache's daughter; (2) Mustache admitted that she then went back into the room and—with the participation of Barry—stabbed Holton, “cut him up very badly,” did “other things to him,” and killed him; and (3) Connors told Neusen that

Mustache “said the same thing” to Connors while the two were seated outside the courtroom during the trial.

Hoffman and Connors were both friends of Mustache. Phillips asserts that Hoffman would testify that Mustache called Hoffman several hours before being taken into custody and, while crying, said that: (1) Mustache might never see the light of day again because she killed someone; (2) after Phillips beat up Holton, Mustache could not stop thinking about what Holton had done to Mustache’s daughter; and (3) Mustache then “freaked out and ended up stabbing the guy and cutting him up real bad.” Although he has not been able to contact Connors, Phillips believes that if Connors were located, she also would testify that Mustache admitted to killing Holton by stabbing and slicing him.

Julie Phillips was a fellow jail inmate of Mustache. According to police reports, Julie stated that Mustache admitted, along with Phillips, to “beating” Holton, “stabbing him,” and “shoving something in his ass.” Isham was dating Phillips at the time of the assault. Phillips asserts that Isham would testify that she had reported to tribal police that Mustache had threatened Isham and her children. Based upon the hostility between Isham and Mustache, Phillips argues it was implausible that he would have been trying to get Mustache to go to Spooner with him. Phillips further asserts that he informed Haukaas about all five of these potential witnesses.

Phillips has not provided this court with any affidavits supporting his assertions about what testimony any of these five potential witnesses would provide.² Phillips' appellate counsel spoke with Neusen, Hoffman and Connors, who all denied that Mustache made any comments to them about having stabbed Holton. Julie's statements to police would not have been exculpatory because Julie also implicated Phillips as participating in the stabbing, cutting, and sodomization of Holton. Therefore, there is no factual basis to support the prejudice element of an ineffective assistance of counsel claim with respect to those four witnesses. See *State v. Sholar*, 2018 WI 53, ¶32, 381 Wis. 2d 560, 912 N.W.2d 89 (requiring a defendant seeking to establish ineffective assistance to prove both deficient performance by counsel and prejudice resulting from that deficient performance).

In addition, Phillips cannot demonstrate prejudice based upon Haukaas's failure to interview or call Isham. Isham was not present during Phillips' interactions with other witnesses following the assault and therefore cannot directly dispute the testimony that Phillips was urging Mustache to go to Spooner with him. Moreover, given the uncontroverted evidence that Phillips did, in fact, leave town with Mustache within hours after the assault, there is no reasonable probability that the jury would have reached a different result even if Isham had testified.

Phillips also contends that Haukaas provided ineffective assistance by failing to interview or investigate: (1) the unnamed witnesses mentioned by the State in chambers who allegedly heard Barry admit to participating with Phillips in the assault; (2) the person from Appleton with whom LaPointe said Mustache consulted about potentially pursuing a battered woman's

² Phillips states that he obtained an affidavit from Neusen contradicting what Neusen told appellate counsel, but Phillips has not provided any such notarized affidavit to this court.

syndrome defense; (3) Crowe, who made the 911 call; (4) Ramirez and Pero, who Crowe testified had directed her to make the 911 call; and (5) White, who was present in the house during the assault. Once again, however, Phillips has provided no affidavits—or even any allegations as to what these potential witnesses would say—to show that any of them could have provided testimony helpful to the defense. Therefore, Phillips cannot establish prejudice based upon Haukaas’s alleged failure to interview or investigate them.

Phillips raises a related claim that the State committed a *Brady* violation by failing to disclose the names of the people to whom Barry allegedly made inculpatory statements and to whom Mustache spoke about a battered woman’s syndrome defense. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (requiring the State to disclose potentially exculpatory evidence or impeachment material within its possession). However, the record shows that the State disclosed the potential existence of witnesses who may have heard Barry making inculpatory statements the day after the State learned about them. The record does not show that the State was ever able to verify that such witnesses did, in fact, exist or that the State ever learned the name of the person with whom Mustache allegedly consulted about battered woman’s syndrome, and Phillips identifies no contrary information outside the record. Therefore, there is no factual basis to establish that the State withheld any actual exculpatory evidence or impeachment material within its possession.

Scientific Testing of Evidence

Phillips next raises a claim of prosecutorial misconduct based upon the State’s failure to test the knives, bite marks, and bolt for fingerprints, blood, or DNA evidence. Phillips alleges that the “only explanation that makes any sense” for the State’s failure to test those items of

evidence is that “representatives of the State *did* testing and failed to disclose the results, or they have highly reliable information that would render the testing unnecessary.” Phillips further alleges that the lack of testing on the knives, bite marks, and bolt allowed the State to knowingly present “false evidence” that Mustache did not stab, bite, or sodomize Holton. Phillips seeks an evidentiary hearing in order to develop a record as to what was done or not done with respect to these items of evidence.

The testimony and reports of the Crime Lab employees admitted at trial already establish a record as to what items of evidence were submitted for testing. Phillips has not identified any testimony or additional evidence he would be able to submit at an evidentiary hearing showing that the Crime Lab also performed—and the State withheld the results of—testing on the knives, bite marks, and bolt. Moreover, the State had no obligation to perform tests on those items of evidence and—given the differing accounts of those present in the house during the assault—could appropriately leave it to the jury to determine, based upon credibility determinations, who stabbed, bit or sodomized Holton. Phillips therefore has no arguably meritorious claim of prosecutorial misconduct based on the State’s failure to test additional items of evidence or the State’s presentation of Mustache’s testimony denying that she stabbed, bit or sodomized Holton.

Phillips also claims that Haukaas provided ineffective assistance by failing to seek testing on the knives, bite marks, and bolt, when Phillips consistently denied that he stabbed, bit or sodomized Holton. Once again, however, Phillips cannot establish prejudice from counsel’s failure to seek testing on additional items absent any evidence that such testing actually would have yielded results favorable to the defense.

Phillips makes a related claim that Haukaas provided ineffective assistance by failing to file a motion to suppress evidence that “could not be connected” to Phillips but perhaps could have been connected to Mustache if additional testing had been done. Phillips has not identified any valid grounds upon which Haukaas could have filed a suppression motion, however. All of the evidence from the crime scene would have been admissible at trial to provide the context of Holton’s death, whether that evidence was ultimately connected to Phillips, Mustache, both of them, or neither of them.

Phillips next seeks an order for postconviction testing of the knives, bite marks, and bolt, pursuant to *State v. O’Brien*, 214 Wis. 2d 328, 572 N.W.2d 870 (Ct. App. 1997). Under *O’Brien*, a party seeking postconviction discovery must:

(1) provide supporting affidavits with the motion which describe the material sought to be discovered and explain why the material was not supplied or discovered at or before trial; (2) establish that alternative means or evidence is not already available such that the postconviction discovery is necessary to refute an element in the case; (3) describe what results the party hopes to obtain from discovery and explain how those results are relevant and material to one of the issues in the case; and (4) after meeting the first three criteria, ... convince the [circuit] court that the anticipated results would not only be relevant, but that the results would also create a reasonable probability of a different outcome.

Id. at 343.

Here, we are not persuaded that additional scientific testing linking the knives, bite marks, or bolt to Mustache (or Barry, for that matter) would create any reasonable probability of a different outcome at trial. To begin with, the prosecutor did not directly argue at trial that Phillips was responsible for the bite marks or for placing the bolt in Holton’s rectum. The prosecutor did attempt to tie at least one of the knives found at the crime scene and the knife

recovered from the trunk of Mecikalski's car to Phillips. However, it was not necessary for the State to show that Phillips had stabbed Holton with a knife, given the other evidence presented at trial. *See generally Sholar*, 381 Wis. 2d 560, ¶58 (holding there can be no reasonable probability that challenged evidence would lead to a different result at trial when there is other overwhelming evidence supporting the conviction).

By Phillips' own account, he repeatedly punched and kicked Holton over a period of ten to thirty minutes, during which time Phillips also hit Holton over the head with a bottle. Phillips also admitted that he brought a BB gun to the scene; the gun had a red substance that appeared to be blood on it; and Phillips did not deny that he struck Holton with the gun. Tranchida testified that the massive blunt-force trauma to Holton's head—which the jury could reasonably infer Phillips caused by blows from his fists, the BB gun, and the bottle—in and of itself, was capable of triggering a cardiac arrest. Only two of the sharp-force injuries to Holton were stab wounds that would most likely have been made by a knife. Multiple other slicing injuries could have been caused by other sharp-edged objects. Several of the incised wounds on Holton's body contained glass particles, and the only fingerprints recovered from the broken bottleneck belonged to Phillips. The latter two facts lead to the strong inference that Phillips also sliced Holton with the bottleneck. In addition, Phillips was the only person who was seen covered in blood after the assault. That fact leads to the dual inferences that Holton was already bleeding heavily before Phillips left the room and that whatever additional injuries might have been inflicted upon Holton after that point were not done with sufficient force or proximity to result in significant blood transfer.

In sum, there was overwhelming evidence that Phillips inflicted a large number of the most serious blunt-force and sharp-force injuries that collectively, according to Tranchida, were

a substantial factor in causing Holton's death by cardiac arrest. The probability that one or more other people may have participated in the assault by stabbing, biting, and sodomizing Holton does not negate Phillips' role in causing Holton's death, as established by Phillips' own testimony and the physical evidence. We therefore conclude that Phillips has no arguably meritorious claim for entitlement to postconviction testing of the knives, bite marks, or bolt.

Tranchida's Testimony

Phillips contends that Tranchida's testimony improperly: (1) included speculative opinions that were not held to a reasonable degree of medical certainty; and (2) conflated all of Holton's injuries into a single assault. Phillips further argues that Haukaas provided ineffective assistance by failing to object to Tranchida's opinion testimony and that the prosecutor improperly relied upon and advanced Tranchida's opinions.

In support of his improper speculation argument, Phillips points to Tranchida's testimony that some of Holton's injuries were merely consistent with having been caused by the broken bottle or BB gun or those types of instruments; that Holton's stab wounds could have been survivable, while it was possible that Holton could have died or suffered permanent disability from the head wounds; and that injuries to Holton's hands were potentially defensive wounds. There is a difference, however, between making an assertion that something in fact happened a certain way and expressing an opinion, to a reasonable degree of medical certainty, that an injury could have been caused in a particular way or could have resulted in particular consequences. Tranchida's testimony falls into the latter category and is consistent with answering hypothetical questions, which Wisconsin law allows experts to do. *See State v. Berg*, 116 Wis. 2d 360, 368, 342 N.W.2d 258 (Ct. App. 1983). It follows that Haukaas did not provide ineffective assistance

by failing to object to Tranchida's testimony as improperly founded opinion, and the prosecutor did not engage in misconduct by relying upon that testimony.

Phillips' improper conflation argument starts with the theory that Mustache (or Mustache and Barry) stabbed, bit, and sodomized Holton after Phillips inflicted blunt-force injuries upon Holton and left the room. From that premise, Phillips contends it was improper for Tranchida to characterize Holton's injuries as resulting from a single physical assault. Phillips' theory is contrary to Tranchida's expressed opinion as to the cause of death, however. Tranchida repeatedly stated his opinion that Holton's cardiac arrest was the result of the blunt-force *and* sharp-force injuries inflicted upon Holton over an extended period of time. Whether the blunt-force and sharp-force injuries were inflicted contemporaneously or serially with some pause in between stages, by one person or by several people, there was no dispute that Holton never left the room between when the first and last injuries were inflicted. There was also no evidence to suggest that Holton would have stopped hemorrhaging from the blunt-force injuries Phillips inflicted on Holton's head if additional sharp-force injuries were later inflicted by someone else. It was therefore entirely fair to characterize all of the injuries together, which resulted in cumulative blood loss, as part of one prolonged physical assault. Neither Tranchida nor the prosecutor committed any error in doing so.

As a corollary to his conflation argument, Phillips asserts that "the actions of another cannot be combined with separate actions of Phillips" as a cause of death. This is a misstatement of the law. There may be more than one cause of a death, and the acts of two or more persons may "jointly" cause a death. *See State v. Oimen*, 184 Wis. 2d 423, 433, 516 N.W.2d 399 (1994).

Additional Expert Opinion

Based upon a substantially similar premise that sharp-force injuries inflicted after Phillips left the room could have been the primary factor in causing Holton's death, Phillips also contends that Haukaas provided ineffective assistance by failing to specifically ask Tranchida whether the blunt-force injuries Holton sustained were *alone* a substantial factor in causing Holton's death. Phillips raises a related claim that Haukaas provided ineffective assistance by failing to retain a defense expert to testify that the blunt-force injuries alone were *not* a substantial factor in causing Holton's death. These arguments are flawed in multiple respects.

First and foremost, Phillips has again failed to provide any factual basis to establish prejudice from his claims. Specifically, Phillips has not attached any affidavits from Tranchida or any other expert who would testify that the blunt-force injuries Holton sustained were not, alone, a substantial factor in causing Holton's death.

Second, Tranchida testified that the traumatic injury to Holton's brain and the extensive hemorrhaging beneath Holton's scalp could have triggered cardiac arrest in and of themselves. Given that testimony, Haukaas could reasonably have assumed that Tranchida would also testify that the blunt-force trauma to Holton's head *was*, alone, a substantial factor in causing Holton's death. It was therefore not deficient performance for counsel to omit asking that specific question.

Finally, Phillips ignores the strong evidence from which a jury could conclude that Phillips inflicted sharp-force slicing injuries upon Holton with a broken bottleneck. In addition—notwithstanding Phillips' denial—a jury could also conclude that Phillips wielded the knife Gates saw Phillips put in his pocket before going to Mustache's house or one of the knives

at the scene that was identified as belonging to Phillips, even if the jury concluded that Mustache wielded another knife. In this regard, the fact that two different knives were found near the body would easily support the inference that two different people used knives during the assault. It is therefore not reasonably probable that there would be a different result at trial if either Tranchida or an expert retained by the defense offered additional opinion testimony that blunt-force injuries, alone, were not a substantial factor in causing Holton's death.

Prosecutor's Closing Argument

Phillips alleges both that the prosecutor mischaracterized the evidence in several respects throughout the trial and during closing argument and that Haukaas provided ineffective assistance by failing to object to these mischaracterizations. Phillips specifically challenges the prosecutor's statements that: (1) Holton was "beaten to death"; (2) Tranchida expressed the opinion that Holton's heart attack was caused by "the beating"; (3) Tranchida expressed the opinion that "the defendant's act" was a substantial factor in causing Holton's death; (4) Phillips admitted using a knife to get Holton's attention; (5) Phillips changed his story as to whether Holton grabbed Phillips' leg by the futon or by the door; and (6) Holton's bloody fingers made red marks on the door.

Counsel is allowed considerable latitude in closing arguments to comment upon the evidence and to suggest fair inferences to be drawn from the evidence to arrive at conclusions on the controlling questions. *State v. Burns*, 2011 WI 22, ¶48, 332 Wis. 2d 730, 798 N.W.2d 166. Even improper statements by a prosecutor are not sufficient to warrant a new trial unless they "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Id.*, ¶49 (citation omitted).

We are satisfied that the first three statements Phillips challenges are all fair inferences that could be drawn from the evidence. As noted above, Tranchida testified that the traumatic injury to Holton's brain and the extensive hemorrhaging beneath Holton's scalp were part of the extended assault that triggered Holton's cardiac arrest and they could have caused the cardiac arrest in and of themselves. Using the shorthand term "beating" to refer to an assault that included both blunt- and sharp-force injuries was reasonable when the blunt-force injuries were such a significant part of the assault. Although it is true that Tranchida did not offer any opinion as to who had inflicted which injuries, the prosecutor's reference to "the defendant's act" merely combined other evidence as to what acts Phillips had committed with Tranchida's opinion as to the effect of those acts.

The prosecutor's statement that Phillips admitted using a knife to get Holton's attention plainly misstated the evidence because Phillips actually testified that he used a BB gun to get Holton's attention. We are not persuaded, however, that the misstatement infected the entire trial. The parties thoroughly litigated whether or not Phillips had used a knife during the assault. In any event, Phillips' admitted role in inflicting the blunt-force injuries was itself sufficient to sustain the verdict.

Next, Phillips stated at different points during his custodial interview that Holton grabbed Phillips' leg by the door as Phillips left the room and that Holton was grabbing Phillips' leg when Phillips regained consciousness after blacking out. Phillips testified at trial that Holton was grabbing Phillips' leg when Phillips regained consciousness after blacking out by the couch. Because Phillips was vague during his custodial interview as to where in the room he was when he blacked out and whether Holton grabbed Phillips' leg once or twice, it is possible that Phillips' custodial statement and testimony could be reconciled. However, the prosecutor's

inference that Phillips had changed his story from having his leg grabbed by the door to having it grabbed by the couch was fair based upon the alternate wording of Phillips' custodial statement and his testimony.

Finally, the prosecutor's suggestion as to how the red marks on the door were created was also a fair inference from the crime scene photographs.

Defense Counsel's Closing Argument

Phillips contends that Haukaas provided ineffective assistance during closing argument by: (1) misstating the charge as first-degree intentional homicide; (2) failing to object to the prosecutor's six statements discussed above; (3) merely arguing that the State failed to link Phillips to the knives without taking steps to link others to the knives; (4) failing to request an instruction on a lesser-included offense of aggravated battery; (5) failing to argue that the State had failed to prove an utter disregard for human life or that the jury should convict Phillips of the lesser-included offense of second-degree reckless homicide; and (6) limiting his argument on causation to pointing out Tranchida's admission that Holton could have died that day just from acute methamphetamine intoxication. Once again, Phillips cannot demonstrate prejudice arising from any of these alleged errors by counsel.

First, Haukaas's obviously inadvertent misstatement that Phillips was charged with first-degree intentional homicide would not have confused the jury, given the instructions provided by the circuit court and the remainder of the closing arguments. We see no prejudice from this error.

Second, we have already explained that five of the prosecutor’s six statements that Phillips challenges were unobjectionable and that the remaining misstatement was nonprejudicial.

Third, we have already explained that Phillips cannot demonstrate prejudice based on Haukaas’s failure to seek testing on the knives or other physical evidence absent any evidence that the results of such testing would have been favorable to the defense. Pointing out that the State had failed to conclusively link the knives either to Phillips, or even to the injuries on Holton, was an entirely reasonable defense strategy given the evidence actually produced at trial.

Fourth, aggravated battery is not a lesser-included offense of first-degree reckless homicide. Under WIS. STAT. § 939.66(1), a lesser-included offense is one that “does not require proof of any fact in addition to those which must be proved for the crime charged.” Aggravated battery has two elements: (1) causing great bodily harm to a person; (2) with the intent to cause harm or great bodily harm to that person or another. WIS. STAT. § 940.19(4) and (5). Conversely, first-degree reckless homicide has three elements: (1) causing the death of a person; (2) by criminally reckless conduct; (3) under circumstances showing utter disregard for human life. The intent element of aggravated battery requires proof of an additional fact beyond that required to prove the intent element of first-degree reckless homicide—namely, that the defendant “had the mental purpose” to cause harm or great bodily harm or was aware that his or her conduct was “practically certain” to cause such harm. *Compare* WIS JI—CRIMINAL 1225 (2003), *with* WIS JI—CRIMINAL 1020 (2015). Haukaas therefore had no basis to request an instruction on the uncharged offense of aggravated battery. Additionally, we note that Haukaas did suggest to the jury that the State had overcharged the case by noting that Phillips had not “been given the opportunity to plead to” merely “fighting” with Holton.

Fifth, Haukaas argued that the reason that Phillips did not go back to check on Holton was that “he didn’t think he needed to, because other people were telling [Phillips] that [Holton] was going to be fine.” That argument was plainly addressed toward the “utter disregard” element of the homicide charge. We are not persuaded that there was any additional argument Haukaas could have advanced on the “utter disregard” element that would have led to a conviction on second- rather than first-degree reckless homicide because Phillips does not identify a single action that he took before, during, or after the assault showing that he had any regard for Holton’s life.

Finally, Haukaas’s argument on causation was not limited to arguing that Holton could have died from his methamphetamine use alone. Haukaas also pointed out: (1) the lack of testing to confirm that the red substance on various items recovered from the crime scene was actually Holton’s blood or that any of the knives had Phillips’ fingerprints on them; (2) an innocent explanation for Phillips’ fingerprints on the broom handle; (3) the State’s failure to present Nelis and White as witnesses; (4) the incriminating statements Mustache made to LaPointe and Bratti; (5) various changes and inconsistencies in Mustache’s account and the concessions the State offered to Mustache for her testimony; (6) the uncontroverted facts that Holton was still alive when Phillips left the room and that Mustache subsequently returned to the room several times; (7) several reasons to question the credibility of Barry and Gates; and (8) the consistency of Phillips’ statements and his stated intention to beat up Holton, not kill him. In sum, Haukaas took reasonable steps during closing argument to point out weaknesses in the State’s case.

Crime Scene Video

Phillips contends that the prosecutor engaged in misconduct when he played the portion of the crime scene video containing an image substantially similar to a crime scene photograph that had been excluded from evidence. Phillips further argues that Haukaas provided ineffective assistance by failing to object in advance to having the video played. We agree with appellate counsel's analysis, however, that the circuit court properly exercised its discretion when it denied a mistrial. Specifically, it was reasonable for the court to conclude that a fleeting image in a video was not as prejudicial as a photograph that the jury would be able to view for a more extended period of time.

Party-to-the-Crime Instruction

Phillips next alleges prosecutorial misconduct and ineffective assistance of counsel based upon the circuit court's failure to instruct the jury as to the requirements for a party-to-the-crime liability. The record does not show whether the lack of a party-to-the-crime instruction was an oversight or a deliberate choice made during the jury instruction conference based upon the State's theory of the case and the evidence presented at trial. Phillips cannot demonstrate prejudice from the omission in either event, however, because under the jury instructions that were given, the State needed to prove that Phillips directly committed every element of either first- or second-degree reckless homicide. Adding a party-to-the-crime instruction would have effectively *lowered* the State's burden of proof. See *State v. Williams*, 2015 WI 75, ¶62, 364 Wis. 2d 126, 867 N.W.2d 736 (holding that an erroneous jury instruction that raises the State's burden of proof may be considered harmless error).

Voir Dire

Phillips contends that he was denied effective assistance of counsel and his right to an unbiased jury when Haukaas failed to move to strike or use peremptory strikes to remove McBain and Bretting from the jury panel. We agree with appellate counsel, however, that these jurors' answers to questions during voir dire did not provide grounds to strike them. Nor has Phillips alleged any evidence of bias that additional questioning would have revealed. Absent any showing that a jury was, in fact, subjectively biased, there can be no claim that counsel provided ineffective assistance by failing to remove the jurors. *State v. Tobatto*, 2016 WI App 28, ¶¶15, 22, 368 Wis. 2d 300, 878 N.W.2d 701.

911 Call

Phillips claims that the circuit court erroneously exercised its discretion when it allowed Crowe to testify about hearsay statements made by Ramirez and Pero that prompted Crowe to make the 911 call. None of the statements attributed to Ramirez and Pero mentioned Phillips,³ however, or set forth any version of events that was contrary to Phillips' own account. We conclude that Phillips has failed to provide any basis to conclude that he was prejudiced by the admission of the hearsay statements in the 911 call.

Custodial Statement

Phillips next claims that the circuit court should have granted his motion to suppress his custodial statement. Phillips alleges he gave his statement after invoking his right to counsel.

³ If Phillips was known by the nickname "John-John," that fact was never introduced at trial.

See *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981) (holding that police must immediately cease questioning a suspect who invokes his or her right to counsel). An equivocal request is insufficient to invoke the right to counsel, however. *State v. Jennings*, 2002 WI 44, ¶36, 252 Wis. 2d 228, 647 N.W.2d 142. We agree with appellate counsel’s analysis that the circuit court properly determined that Phillips’ statement that “we not gonna talk too much because my lawyer [from another case] already advised me not to” was insufficient to invoke Phillips’ right to counsel.

Sufficiency of the Evidence

Appellate counsel asserts that there was sufficient evidence to support the verdicts under the standard that the evidence, viewed most favorably to the verdict, was not “so lacking in probative value and force” that a jury could not be convinced of Phillips’ guilt beyond a reasonable doubt. See *State v. Routon*, 2007 WI App 178, ¶17, 304 Wis. 2d 480, 736 N.W.2d 530. Although Phillips does not directly address the sufficiency of the evidence under this standard, in the course of his discussion of other issues Phillips correctly points out that no witness testified that: (1) Phillips used a knife during the assault; (2) Phillips stabbed, sliced, bit, or sodomized Holton; (3) Holton was stabbed, sliced, bitten, or sodomized before Phillips left the room; (4) Holton stopped breathing or suffered cardiac arrest before Phillips left the room; or (5) Phillips ever admitted to having stabbed, sliced, bitten, or sodomized Holton. As we have already discussed, however, Phillips himself testified that he inflicted blunt-force injuries upon Holton by hitting and kicking him and striking him with a bottle. In addition, there was evidence from which the jury could conclude that Phillips struck Holton with the BB gun that Phillips brought with him. Given the extensive blunt-force injuries to Holton’s head, the jury could reasonably conclude that those blows alone were a substantial factor in causing Holton’s death

and that they had been inflicted recklessly in circumstances showing utter disregard for human life.

In addition, we note that it was not necessary for anyone to testify that Phillips stabbed or sliced Holton with a knife or broken bottleneck for the jury to conclude that he had done so. It was obvious that someone was lying about inflicting those injuries, and it was for the jury to determine whose denials to believe or disbelieve. The jury could reject Phillips' denial that he used a knife during the assault based on the fact that he owned one of the two knives found near the body. The jury could also reject Phillips' denial that he had sliced Holton with the bottleneck based upon the glass in some of Holton's wounds and Phillips' fingerprints on the bottleneck.

Sentencing

Phillips does not claim any error with regard to his sentencing. We agree with appellate counsel's analysis that the circuit court properly exercised its sentencing discretion and imposed valid sentences.

Discretionary Reversal

WISCONSIN STAT. § 752.35 allows this court to reverse a judgment of the circuit court "if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried." We agree with appellate counsel's assessment that there are no grounds for discretionary reversal here. In terms of the real controversy being tried, we note that the defense presented testimony from two different people that Mustache admitted she had stabbed, bitten, and sodomized Holton during the assault. Thus, the jury had an

opportunity to consider whether Mustache was lying about her role in the assault, even without any testing linking her to the knives, bite marks, or bolt.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21. In light of our determination, we need not address Phillips' additional request that substitute counsel be appointed.

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

IT IS FURTHER ORDERED that Attorney Melissa M. Petersen is relieved of any further representation of Matthew Phillips, Jr., in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals