Josh Kaul
Wisconsin Attorney General

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NEWS FOR IMMEDIATE RELEASE

June 4, 2022

UPDATE: Critical Incident Investigation in Mauston, Wis.

MAUSTON, Wis. – Wisconsin Department of Justice (DOJ) Division of Criminal Investigation (DCI) is investigating a critical incident that occurred in the Township of New Lisbon, Wis. the morning of Friday, June 3, 2022.

On Friday, June 3 at approximately 6:30 a.m. the Juneau County Sheriff's Office received a call notifying law enforcement of an armed person and two shots fired in a Township of New Lisbon residence. The caller had exited the home and contacted law enforcement from a nearby home.

Following failed attempts to negotiate with **Douglas K. Uhde**, age fifty-six, who was in the home, at approximately 10:17 a.m. the Juneau County Special Tactics and Response Team entered the residence and located **retired Judge John Roemer**, a sixty-eight-year-old male, deceased. **Uhde** was located in the basement with an apparent self-inflicted gunshot wound. Law enforcement began life-saving measures, and **Uhde** was transported to a medical facility and remains in critical condition. A firearm was recovered at the scene.

This incident appears to be a targeted act. There is no immediate danger to the public.

DCI is leading this investigation and is assisted by the Juneau County Sheriff's Office, Wisconsin State Crime Lab, DOJ's Office of Crime Victim Services, and numerous law enforcement agencies.

Anyone with information about Uhde should contact Wisconsin Department of Justice at (608) 266-1221.

DOJ Communications Office DOJCommunications@doj.state.wi.us (608) 266-1220

DCI is continuing to review evidence and determine the facts of this incident and will turn over investigative reports to the Juneau County District Attorney when the investigation concludes.

Please direct all media inquiries regarding this incident to Wisconsin DOJ.

DOJ Communications Office DOJCommunications@doj.state.wi.us (608) 266-1220

Wisconsin Department of Corrections

Offender Basic Information Sheet

Name: UHDE, DOUGLAS K

DOC #: 00376328
Birth Year: 1965
Age: 56
Height: 6' 4" Weight: 190
Race: WHITE
Ethnicity: NOT HISPANIC OR LATINO
Hair Color: BROWN
Eye Color: HAZEL
Sex: MALE
Dexterity: RIGHT HANDED
PhotoDate: 03/17/2020

Wisconsin Department of Corrections

Name: **UHDE, DOUGLAS K** DOC: **00376328**

Birth year: **1965**
Age: **56**
Gender: **MALE**
Race: **WHITE**
Ethnicity: **NOT HISPANIC OR LATINO**
Dexterity: **RIGHT HANDED**

Weight: **190**
Height: **6' 4"**
Eye Color: **HAZEL**
Hair Color: **BROWN**

Aliases
DOUGLAS K UHDE
DOUGLAS UHDE


Front


Left


Right

Photo(s) Taken: **03/17/2020**

Status: **ACTIVE COMMUNITY SUPERVISION**
Sub-Status: **ABSCONDED**
Institution:

Region Unit:

Unit 821
8 21 06
427 E Tower Drive
Suite 300
Wautoma, WI 54982
(920) 7874406

Maximum Discharge Date: **08/30/2031**
Parole Eligibility Date:
Mandatory Release/Extended Supervision Date:

Addresses

Residence

Address	Reported
FRIENDSHIP, WI, 53934, County of ADAMS	12/03/2018

Movement

Date	Type	Reporting Location	Other Location
04/14/2020	Released on	Stanley Correctional Institution	Unknown

	Extended Supervision		
04/25/2019	Received from another Facility	Stanley Correctional Institution	Dodge Correctional Institution
04/25/2019	Transferred to Another Facility	Dodge Correctional Institution	Stanley Correctional Institution
03/25/2019	Returned from Extended Supervision (ES)	Dodge Correctional Institution	Adams County Jail
07/07/2015	Released on Extended Supervision	Stanley Correctional Institution	Unit 819 Adams
04/11/2008	Returned from Court	Stanley Correctional Institution	Adams County Jail
04/10/2008	Out to Court	Stanley Correctional Institution	Adams County Jail
01/26/2007	Received from another Facility	Stanley Correctional Institution	Wisconsin Secure Program Facility
01/26/2007	Transferred to Another Facility	Wisconsin Secure Program Facility	Stanley Correctional Institution
07/28/2006	Received from another Facility	Wisconsin Secure Program Facility	Columbia Correctional Institution
07/28/2006	Transferred to Another Facility	Columbia Correctional Institution	Wisconsin Secure Program Facility
05/09/2006	Switched Supervision Responsibility	Columbia Correctional Institution	Fox Lake Correctional Institution - Minimum
04/20/2006	Received from another Facility	Columbia Correctional Institution	Adams County Jail
04/20/2006	Transferred to Another Facility	Adams County Jail	Columbia Correctional Institution
04/17/2006	Escapee In Custody (Other Jurisdiction)	Fox Lake Correctional Institution - Minimum	Adams County Jail
03/27/2006	Escaped	Fox Lake Correctional Institution - Minimum	Unknown
01/13/2006	Received from another Facility	Fox Lake Correctional Institution - Minimum	Dodge Reception
01/13/2006	Transferred to Another Facility	Dodge Reception	Fox Lake Correctional Institution - Minimum
11/22/2005	Admitted Inmate with	Dodge Reception	Unknown

	New JOC		
06/06/2005	Released by Court	Stanley Correctional Institution	Unknown
06/02/2005	Out to Court	Stanley Correctional Institution	Adams County Jail
05/29/2003	Received from another Facility	Stanley Correctional Institution	Dodge Correctional Institution
05/29/2003	Transferred to Another Facility	Dodge Correctional Institution	Stanley Correctional Institution
05/27/2003	Received from another Facility	Dodge Correctional Institution	Green Bay Correctional Institution
05/27/2003	Transferred to Another Facility	Green Bay Correctional Institution	Dodge Correctional Institution
07/09/2002	Received from another Facility	Green Bay Correctional Institution	Dodge Reception
07/09/2002	Transferred to Another Facility	Dodge Reception	Green Bay Correctional Institution
04/10/2002	Admitted Inmate with New JOC	Dodge Reception	Unknown

Court Cases

Case #	Location	Statute #	Convicted
01CF00069	ADAMS	941.28(2) , 941.29(1)(A) , 941.29(2)(A) , 943.10(1)(A) , 943.10(2)(A)	01/28/2002
06CF00221	DODGE	946.42(3)(A)	01/25/2007
07CF00033	ADAMS	346.04(3) , 943.23(3) , 946.41(1)	04/10/2008
UNKNOWN	OUT-OF-STATE	UNKNOWN - IC	01/01/1000

COURT OF APPEALS
DECISION
DATED AND FILED

October 28, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-3135-CR **Cir. Ct. No. 01CF000069**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DOUGLAS K. UHDE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Adams County: JAMES MILLER, Judge. *Reversed and cause remanded with directions*.

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Douglas Uhde appeals a judgment convicting him of three felonies and one misdemeanor, including burglary while using a

dangerous weapon.[1] He also appeals an order denying his postconviction motion to withdraw his pleas to the charges. On appeal, Uhde contends that he did not enter a knowing and voluntary plea, for two reasons: (1) the trial court failed to personally inform him that, under truth-in-sentencing, he would have to serve the entire period of initial confinement without opportunity for good time or parole, and (2) during the plea colloquy, the trial court misstated the elements of the burglary charge. The State concedes error on the latter issue. We therefore reverse and remand with directions to grant Uhde's plea withdrawal motion.

¶2 When we first considered Uhde's appeal, the State disputed both of Uhde's plea withdrawal arguments. We issued a decision reversing and remanding for a rehearing on Uhde's plea withdrawal motion. After further consideration, we withdrew our opinion and certified the appeal to the supreme court on the question whether a circuit court must inform a defendant, during the plea colloquy, that initial confinement under truth-in-sentencing will not be reduced by good time or parole. The supreme court granted certification. After the supreme court accepted the case, the State submitted a brief reversing its position on Uhde's burglary misstatement claim. The State conceded before the supreme court that Uhde is entitled to plea withdrawal based on the trial court's misstatement of the elements of burglary. Uhde then asked the supreme court to summarily dispose of the appeal or vacate the certification. On September 16, 2004, the supreme court granted Uhde's motion for summary disposition and

[1] In an apparent clerical error, the judgment omits the weapon enhancer from the burglary count. The prosecutor charged Uhde with burglary while using a dangerous weapon, and that is the charge the trial court explained to Uhde at the plea hearing before accepting his plea to it. Nothing of record indicates any subsequent amendment of the charge. The parties both agree that the conviction includes the enhancer, notwithstanding the judgment's omission.

remanded the case to this court for further proceedings "in light of the State's concession in its brief … that defendant-appellant is entitled to plea withdrawal." Although our review of the State's supreme court brief does not, in our view, reveal a clear explanation as to why the State is now confessing error, we conclude that the supreme court must have deemed the concession appropriate or that court would not have vacated the certification.

¶3 After the case returned to this court, the State asked that we accept its supreme court brief as its brief-in-chief before this court. Uhde filed a motion for clarification and moved for summary disposition. The State then filed a letter stating that it takes no position on Uhde's motion for summary disposition. We grant the State's motion and inform the parties that we have considered the concession in the State's supreme court brief and the State's decision before this court not to oppose Uhde's motion for summary disposition.

¶4 We also note that it is apparent that the State's plea withdrawal concession includes the assumption that all pleas entered by Uhde are to be withdrawn. We understand Uhde to be seeking precisely that relief. *See* ***State v. Robinson***, 2002 WI 9, ¶31, 249 Wis. 2d 553, 638 N.W.2d 564 (where defendant successfully challenges plea to one of two counts, "ordinarily the remedy is to reverse the convictions and sentences, vacate the plea agreement, and reinstate the original information ….").

¶5 Consequently, we reverse and remand. On remand, we direct the trial court to grant Uhde's plea withdrawal motion and vacate his convictions. Because Uhde's original pleas will be withdrawn, we have no further reason to consider Uhde's truth-in-sentencing claim.

By the Court.—Judgment and order reversed and cause remanded with directions.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (2001-02).

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2009AP1362-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DOUGLAS K. UHDE,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING UHDE POSTCONVICTION RELIEF ENTERED IN THE ADAMS COUNTY CIRCUIT COURT, THE HONORABLE CHARLES A. POLLEX, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT IV

Case No. 2009AP1362-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DOUGLAS K. UHDE,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING UHDE POSTCONVICTION RELIEF ENTERED IN THE ADAMS COUNTY CIRCUIT COURT, THE HONORABLE CHARLES A. POLLEX, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication.

ARGUMENT

I. THE STATE ASKS THIS COURT TO REMAND UHDE'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS FOR AN EVIDENTIARY HEARING.

A. Relevant Facts

On February 16, 2009, Uhde, acting *pro se,* filed an initial motion for postconviction relief on direct appeal (74). The motion included claims involving ineffective assistance of counsel, prosecutorial misconduct, sufficiency of the evidence, and jury instructions. The State responded to Uhde's motion, asking the circuit court to deny the motion without holding an evidentiary hearing, arguing the allegations were "conclusory" and "without a factual basis" (75). Uhde filed a supplemental motion on March 30, 2009 (76).

The circuit court denied Uhde's motion in all respects except two. The court ordered an evidentiary hearing on Uhde's claims of ineffective assistance of counsel and his claim that trial counsel refused to turn over Uhde's case file to Uhde. The court denied the remaining claims because the motion contained only conclusory allegations and did not provide a "sufficiently specific basis for conducting an evidentiary hearing" (77:2).

The court held a scheduling conference. Uhde appeared at the conference *pro se* and by telephone. Trial counsel and the prosecutor appeared in person (82:1). At the conference, the court scheduled the evidentiary hearing for April 30, 2009, after determining that trial counsel would be available on that date (82:4).

Specifically, the court stated with respect to the appearance of Uhde and trial counsel on that date:

> THE COURT: I am going to order then that an Order to Produce issue. I will sign it directing that Mr. Uhde be present commencing at 1:00 p.m. And, Mr. Weiland [trial counsel], you will be present at 1:00 p.m.

(82:4.) Trial counsel responded that he was putting it on his calendar (82:4).

Uhde told the court that he had subpoenas to be issued for the people who needed to be at the evidentiary hearing (82:5). The court responded:

> THE COURT: The only part of your Motions which is being considered at the evidentiary hearing on April 30th commencing at 1:00 o'clock are those two items which I mentioned, specifically whether you were denied the effective assistance of counsel for the reasons specified in your Motions or as a second issue, whether or not Mr. Weiland should be directed to turn over your file to you for purposes that you may choose to use it for post conviction or appeal matters. Those are the only issues that will be considered on April 30th. There is a written Order that has been issued and will be provided clarifying what I have stated orally on the record here today. . . . April 30th then at 1:00 p.m. That's all for today.

(82:5-6.)

On the April 30, 2009, evidentiary hearing, trial counsel did not appear (83:2). Uhde believed that, at the scheduling conference, the court had ordered trial counsel to appear at the evidentiary hearing (83:2-3). Uhde also believed that the court had told him there was no need to issue the subpoenas that Uhde had prepared (83:3). The court responded that it was Uhde's responsibility to ensure that his witnesses were present at the evidentiary hearing (83:3). The court denied Uhde's ineffective assistance of counsel claims for lack of evidentiary support based on

the fact that Uhde did not subpoena trial counsel and counsel failed to appear (81).

B. It was reasonable for Uhde, acting *pro se,* to believe the court had ordered trial counsel to appear at the *Machner* hearing.

The State is asking this court to remand Uhde's case to the trial court for the sole purpose of conducting a *Machner* hearing on his ineffective assistance of counsel claims. A *Machner* hearing is a prerequisite to succeeding on any ineffective assistance of counsel claim brought in the trial court. A properly pleaded claim of ineffective assistance of trial counsel triggers an evidentiary hearing at which counsel testifies regarding his challenged conduct. *See State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979); *see also State v. Curtis,* 218 Wis. 2d 550, 554-55, 582 N.W.2d 409 (Ct. App.), *review dismissed,* 584 N.W.2d 125 (1998). A *Machner* hearing is a prerequisite to a claim of ineffective representation.

> The hearing is important not only to give trial counsel a chance to explain his or her actions, but also to allow the trial court, which is in the best position to judge counsel's performance, to rule on the motion. This dual purpose renders the hearing essential in every case where a claim of ineffective assistance of counsel is raised. Here, a lack of a *Machner* hearing prevents our review of trial counsel's performance.

Curtis, 218 Wis. 2d at 554-55. Thus, this court may not review Uhde's ineffective assistance of counsel claims in the absence of a *Machner* hearing.

It is true that a defendant is not automatically entitled to an evidentiary hearing on a postconviction motion. A circuit court's decision to summarily deny a motion must be measured against the standard set in

Nelson v. State, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972), and reaffirmed in *State v. Bentley,* 201 Wis. 2d 303, 310-11, 548 N.W.2d 50 (1996). A hearing is required only if the motion alleges facts which, if proved true, would entitle the defendant to relief. *See Bentley*, 201 Wis. 2d at 310; *Nelson*, 54 Wis. 2d at 497; *see also Curtis*, 218 Wis. 2d at 555 n.3. If the defendant's motion on its face fails to allege sufficient facts to raise a question of fact, or if the motion presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, then the circuit court may summarily deny the motion. *See Bentley*, 201 Wis. 2d at 309-10, citing *Nelson,* 54 Wis. 2d at 497-98. The facts supporting the claim of ineffective assistance must be alleged in the moving papers. The defendant cannot rely on conclusory allegations, hoping to supplement them at a hearing. *See Bentley,* 201 Wis. 2d at 313.

However, in this case, the circuit court determined that Uhde had alleged sufficient facts to support his ineffective assistance of counsel claims to warrant an evidentiary hearing. The State will not second-guess that determination. The sole reason for denying Uhde's ineffective assistance of counsel claims was the court's determination that Uhde was required by means of a subpoena to ensure his trial counsel's appearance at the evidentiary hearing (81).

The State believes that it was reasonable for Uhde, acting *pro se*, to believe that the court had ordered trial counsel to appear at the evidentiary hearing. After all, the court directly stated to trial counsel at the scheduling conference, "And, Mr. Weiland [trial counsel], you will be present at 1:00 p.m." (82:4). Moreover, it was reasonable for Uhde to believe that he did not have to issue a subpoena for his counsel's appearance. At the scheduling conference, Uhde indicated that he had subpoenas to issue. The court's response made it appear that it would not be necessary (82:5-6).

Whether or not Uhde had a technical responsibility to issue the subpoena to ensure his trial counsel's appearance, the State believes that fairness requires Uhde be given another opportunity. The State asks this court to remand Uhde's case for the sole purpose of holding a *Machner* hearing at which trial counsel will be ordered to appear.

II. THE CIRCUIT COURT PROPERLY DENIED UHDE'S CLAIMS OF PROSECUTORIAL MISCONDUCT WITHOUT HOLDING AN EVIDENTIARY HEARING BASED ON THE CONCLUSORY NATURE OF THE ALLEGATIONS.

A. Standard of Review.

If the postconviction motion is deficient, the circuit court has the discretion to deny it without an evidentiary hearing because it fails to allege sufficient facts, presents only conclusory allegations, or the record conclusively shows that the defendant is not entitled to any relief. *Bentley*, 201 Wis. 2d at 309-10. If a motion is deficient, the circuit court's decision to deny an evidentiary hearing will be subject to deferential appellate review. *Id. See State v. Allen*, 2004 WI 106, ¶¶ 9, 12, 274 Wis. 2d 568, 682 N.W.2d 433.

B. Legal Principles.

The motion for postconviction relief must allege the facts supporting the claims, and the defendant cannot rely on conclusory allegations hoping to supplement them at a hearing. *Bentley*, 201 Wis. 2d at 313. This prescreening procedure is fair to the petitioner and necessary for the court because of the vast amount of

work in the circuit courts. *Id.* at 317-18 (citing *Levesque v. State*, 63 Wis. 2d 412, 421-22, 217 N.W.2d 317 (1974)).

To be sufficient to require an evidentiary hearing in the circuit court, the motion must allege material facts. *Allen*, 274 Wis. 2d 568, ¶ 22. It also needs to allege with specificity who, what, when, where, why, and how the defendant would prove that he is entitled to vacation of his conviction and a new trial. *Id.*, ¶ 23. *See State v. Love*, 2005 WI 116, ¶¶ 26-28, 284 Wis. 2d 111, 700 N.W.2d 62.

C. The Circuit Court Acted Within Its Discretion.

The circuit court reviewed Uhde's postconviction motion, the court's file, and the transcripts of the trial and determined that Uhde was not entitled to an evidentiary hearing on his claims of prosecutorial misconduct. Specifically, the court determined that Uhde had "failed to set forth in said motions a sufficiently specific basis for conducting an evidentiary hearing" (77:2).

Uhde claims that the prosecutor planted evidence and encouraged false testimony. Uhde's brief at 13. Specifically, he challenges the credibility of certain exhibits the State submitted at trial. Uhde's brief at 14. Uhde alleges that law enforcement planted a "phantom vehicle" on an "unidentified parcel of land" and depicted it in exhibits in order to incriminate Uhde. Uhde's brief at 15. Uhde offers no support for these claims—as to whom, when, and where this was allegedly accomplished. His challenges to photographic exhibits, which he argues have some discrepancies with testimony elicited at trial, were issues for cross-examination at trial. *See* Uhde's brief at 14.

Prosecutorial misconduct, in this context, occurs if the prosecutor relied on evidence known to be false or later found to be false. *State v. Nerison,* 136 Wis. 2d 37, 54, 401 N.W.2d 1 (1987), citing to *Giglio v. United States,* 405 U.S. 150, 153-54 (1972). Due process requires a new trial if there is a reasonable likelihood the knowing use of false evidence affected the judgment. *Id.*

In *Nerison* the court of appeals had reversed the conviction upon concluding that inducements by the prosecution to the witnesses had "irreparably tainted" their testimony and denied the defendant due process. *Id.* at 45. The supreme court **reversed** the court of appeals and reinstated the conviction, stating that the proper antidote was reliance upon cross-examination and:

> As the Supreme Court put the matter in *Hoffa v. United States,* 385 U.S. 293, 311, 87 S. Ct. 408, 418, 17 L.Ed.2d 374 (1966), '[t]he established safeguards of the Anglo-American legal system leave the veracity of a witness to be tested by cross-examination, and the credibility of his testimony to be determined by a properly instructed jury.'

Nerison, 136 Wis. 2d at 48-49.

Here, the trial court properly instructed the jury that it was the sole judge of the credibility of the evidence. The court instructed the jury to use common sense and experience to determine the reliability of the evidence (69-2:352-53). It was the jury's obligation to compare the photographic exhibits with the testimony and determine the credibility of each. Allegations of discrepancies between testimony and exhibits do not support a claim of prosecutorial misconduct. The court properly determined that Uhde had not alleged sufficient specific factual support of his generalized claims of prosecutorial misconduct to warrant an evidentiary hearing.

CONCLUSION

The State asks this court to affirm the circuit court's order denying Uhde's claims of prosecutorial misconduct without holding an evidentiary hearing. With respect to Uhde's ineffective assistance of counsel claims, the State asks this court to remand this case for the sole purpose of conducting a *Machner* hearing.

Dated this 22nd day of October, 2009.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,992 words.

_____
Eileen W. Pray
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 22nd day of October, 2009.

_____
Eileen W. Pray
Assistant Attorney General

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2010AP2901-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DOUGLAS K. UHDE,

Defendant-Appellant.

APPEAL FROM AN ORDER DENYING POSTCONVICTION RELIEF ENTERED IN THE ADAMS COUNTY CIRCUIT COURT, THE HONORABLE CHARLES A. POLLEX, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT STATE OF WISCONSIN

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OTHER AUTHORITIES

STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT IV

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Plaintiff-Respondent,

v.

DOUGLAS K. UHDE,

Defendant-Appellant.

APPEAL FROM AN ORDER DENYING POSTCONVICTION RELIEF ENTERED IN THE ADAMS COUNTY CIRCUIT COURT, THE HONORABLE CHARLES A. POLLEX, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT STATE OF WISCONSIN

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request either oral argument or publication. This case may be resolved by applying well-established legal principles to the facts of this case.

STATEMENT OF FACTS

Uhde's Background Facts section of his brief is full of claims not supported by the record. It does not contain citations to the record. Much of the information presented as fact is purely argument of what Uhde believes happened. The state disputes many of the allegations in this section of Uhde's brief. The state includes its own statement of facts section below.

On March 27, 2006, the Adams County Police Department received information that defendant-appellant Douglas K. Uhde ("Uhde") was wanted by the police (69:223).

On March 31, 2006, someone stole a Ford F-250 truck owned by Easter Seals and driven by Mike Fagan (69:141-42). The Easter Seals was in the Wisconsin Dells (69:141). Fagan had tools, a salt spreader, and personal items in the truck (69:143). Leif Gregerson entered the license plate of the truck in a computer system and reported the vehicle as stolen (69:153). Officers believed there was a connection between Uhde and the stolen truck (69:237).

On April 10, 2006, the Rome Police Department found some keys, the salt spreader, and some miscellaneous items in the woods (69:156). Fagan identified them as coming from his stolen truck (69:144). On April 14, 2006, the Rome Police Department recovered the license plates that had been on the truck when it was stolen (69:157). On April 17, 2006, a man reported that his license plates had been stolen from his 2004 Ford F-150 truck over the weekend near Wisconsin Rapids (69:210).

Police contacted Uhde's former girlfriend Debra Kaehler to let her know that he was wanted by the police (69:177). She was afraid he might come to her home (69:177). On April 15, 2006, Kaehler received two or three phone calls from Uhde (69:178). Uhde told her he

was driving a newer pickup truck (69:180). Police tracked the phone number he called from to a pay phone at Friendship Corners (69:207, 218). A silver Ford F-250 pickup truck was seen on surveillance video at the pay phone at Friendship Corners (69:197-98).

On April 17, 2006, Linda Minigh saw Uhde standing in Kaehler's front yard (69:163).[1] He walked up the front stairs to Kaehler's front door (69:163). Uhde wore a light colored hat, black shirt, blue jeans, and dirty white gym shoes (69:165). Minigh had no doubt that the man she saw was Uhde (69:166). She identified Uhde as the defendant (69:166).

Minigh called Kaehler (69:189). Kaehler called the police and they searched her house (69:190). That night at 6:27 p.m. Kaehler called the police again because she had received a phone call from the hospital that she did not pick up (69:190-91).

At approximately 6:30 that night, Lieutenant David Carlson saw a silver F-250 Ford truck pull out of the Mound View Memorial Hospital parking lot (69:239). The driver had a baseball cap on (69:240, 290). Lieutenant Carlson only saw one person in the truck (69:242). The truck stopped longer than necessary at a stop sign and the driver looked at Kaehler's residence while at the stop sign (69:242).

Lieutenant Carlson had a dispatcher check the license plate and the plates on the truck had been reported stolen out of the Wisconsin Rapids area on April 17, 2006 (69:243). He followed the truck for a while until a marked squad car moved to try to conduct a traffic stop with the driver of the truck (69:246).

---

[1]Uhde alleges that police showed Minigh photos of Uhde prior to asking her what he was wearing. (Uhde's Brief at 2). He made that argument in the circuit court, and the court rejected it finding no evidence to support the claim (67:12-15).

The driver pulled the truck to the side of the road in front of the animal shelter (69:246). Kaehler worked at the animal shelter (69:246). When the squad car got close to the truck, the truck sped away and ran a stop sign (69:246). A high speed chase ensued with speeds around 90 or 95 miles per hour (69:247).

Uhde drove the car into a ditch and into a field (69:278-79). Officers set up a perimeter to contain the truck and driver (69:280-81). The truck careened off a tree and there was a puff of smoke from the engine (69:295). When the truck stopped, the man who had been driving was wearing a dark shirt, dark gloves, and blue jeans (69:296).

Approximately 20 yards behind the truck a fire started and grew rapidly until it started a grass fire (69:297). There was also a small flame from underneath the passenger side of the truck (69:298). Then the truck was on fire and flames engulfed the truck (69:298). The fire destroyed the truck (69:299).[2]

Investigator Mark Bitsky was on one side of the perimeter and saw a man coming out of the field towards him (69:325). That man was wearing a black t-shirt, blue jeans, a baseball cap, and black gloves (69:325). As he got closer, Bitsky identified the man as Uhde (69:325). Bitsky had known Uhde since August of 2001 (69:222). Bitsky had no doubt that it was Uhde (69:325). Bitsky shouted to Uhde to stop (69:326). Uhde ran away (69:326).

A K-9 handler brought a tracking dog to the scene of the fire to track the driver of the truck (69:308). The dog found the track quickly (69:309). While tracking

[2]Uhde seems to believe that because the truck looks different in the post-fire pictures than it was originally described, that means the truck is a "phantom counterfeit" truck from a salvage yard. (Uhde's Brief at 1-2). He further claims that someone used a plywood road and a forklift to place the truck in the area. (*Id.* at 1). There is no support for these allegations in the record.

Uhde, police recovered a baseball cap that resembled the hat worn by the driver of the truck (69:253-54, 311). Officers found Uhde lying flat on the ground near a log (69:254, 315). He wore a black t-shirt and blue jeans (69:254-55).

Officers found the knife and gloves when they found Uhde (69:317). Fagan identified his hat, utility knife, and gloves that were in the truck when it was stolen (69:145-46).[3]

Uhde admitted that he left the Baraboo area and went to Reedsburg (69:257). He stayed in Reedsburg for a week and a half and then went to Wisconsin Rapids (69:257). On April 17, 2006, he came to Adams County to give Kaehler a flower (69:257). Uhde said he tried to call Kaehler from the hospital on April 17 (69:257-58).

STATEMENT OF THE CASE

On February 28, 2007, the state charged Uhde with attempting to flee or elude a traffic officer, operating a motor vehicle without owner's consent as a repeat offender, and obstructing an officer also as a repeat offender (1:1-2).[4] On March 5, 2007, the circuit court found probable cause that Uhde committed the crimes (1:2).

The court held a preliminary hearing on September 12, 2007, and after that bound Uhde over for trial (43:30).

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[3]Uhde argues that in the police reports Fagan said his "Stanley" brand utility knife was stolen and the knife recovered was a different brand. (Uhde's Brief at 2-3). Again, there is nothing in the record to support this claim.

[4]Uhde alleges that the criminal complaint was filed after the state participated in unlawful acts with the Adams County Sheriff's Department. (Uhde's Brief at 5). There is no evidence supporting this claim.

That day the state filed an information (7) Uhde pled not guilty to all counts (66:2). The court held two motion hearings on the numerous pretrial motions filed (67; 68).

Uhde had a trial on April 10, 2008 (69). At the end of the trial, the jury found him guilty of all three counts (54; 69:370-71).[5] The court sentenced Uhde to three years and six months for the eluding an officer conviction, to seven years and six months for the operating a motor vehicle without the owner's consent, and to two years for obstructing an officer (63; 70:42-43). The court ran the sentences consecutive to each other (63; 70:44).

Uhde filed a notice of intent to pursue postconviction relief (65). His appellate counsel moved to withdraw (71). The circuit court granted that motion (72).

Uhde filed a motion for postconviction relief asking the circuit court to vacate the judgment of conviction and subsequent sentence and for an evidentiary hearing based on 24 separate grounds (74:1, 8-10). The state opposed that motion for failure to support his claims with a factual basis (75). Uhde amended his motion (76).

The circuit court denied in part and granted in part Uhde's motion and supplemental motion for postconviction relief (77). The court granted an evidentiary hearing on Uhde's claims of ineffective assistance and that his trial attorney turn over Uhde's case file to Uhde (77:2). The court denied all other claims (77:2).

The circuit court held an evidentiary hearing, and Uhde's trial attorney did not appear because Uhde did not realize that he had to secure his attorney's presence (83:2-3). The court denied Uhde's motion for a new trial and

[5]Uhde claims that no witness identified him as the perpetrator of any criminal acts; no circumstancing or physical evidence tied him to the crimes; and no testimony that he took part in criminal acts. (Uhde's Brief at 3). The record contradicts this claim.

granted Uhde's motion that his attorney turn over his file (81). Uhde appealed from that order (84).

The state believed that Uhde could have reasonably believed that his attorney was under court order to appear (87:2). This court reversed and directed the circuit court to hold a second evidentiary hearing on the issue of whether his attorney provided ineffective assistance (87:2-3). This court affirmed the circuit court's conclusion that the state did not commit prosecutorial misconduct (87:2-3).

The circuit court held a hearing and ordered Uhde to amend his motion and include more than summary and conclusory statements (95:13). Uhde amended his postconviction motion (94). In this amendment, he alleges that his attorney was ineffective for failing to read the discovery, investigate, and challenge allegedly fraudulent evidence offered by the state (94:2-7).

The circuit court then held another evidentiary hearing on September 23, 2010 (113). At that hearing, Uhde's trial attorney was the only witness (113:14-88). After hearing the evidence and arguments by the parties, the court noted that the evidence against Uhde, while circumstantial, was "very, very strong" (113:98-99). The court found that some of the testimony could be perceived as error by Uhde's attorney (113:99). However, the court found that Uhde failed to show any prejudice suffered (113:99). Therefore, the court denied Uhde's motion for a new trial (102; 113:99). Uhde appealed (105). This appeal followed.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY DENIED UHDE'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS.

Uhde alleges that his attorney provided ineffective assistance in two ways. He claims his attorney was ineffective for operating under a conflict of interest and for failing to examine all the physical evidence prior to trial. (Uhde's Brief at 8-23). Uhde's claims must fail.

A. Standard of Review.

Whether a lawyer rendered ineffective assistance is a mixed question of law and fact. *State v. Manuel*, 2005 WI 75, ¶ 26, 281 Wis. 2d 554, 697 N.W.2d 811. The circuit court's findings of fact will be upheld unless they are clearly erroneous. *Id.* Whether the defendant's proof satisfies either the deficient performance or the prejudice prong is a question of law that an appellate court reviews without deference to the circuit court's conclusions. *Id.*

B. Legal Principles.

A defendant claiming ineffective assistance of counsel must prove both that his lawyer's representation was deficient and that he suffered prejudice as a result of that deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Love*, 2005 WI 116, ¶ 30, 284 Wis. 2d 111, 700 N.W.2d 62. If the court concludes that the defendant has not proven one prong of this test, it need not address the other. *Strickland*, 466 U.S. at 697.

To prove deficient performance, a defendant must show specific acts or omissions of counsel that were

"outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690. To demonstrate prejudice, the defendant must show that there is:

> [A] reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Strickland, 466 U.S. at 694; *see Love*, 284 Wis. 2d 111, ¶ 30.

C. Uhde's Counsel Did Not Provide Him With Ineffective Assistance.

Uhde claims that his trial attorney provided him with ineffective assistance. Uhde failed to meet his burden of proof at the evidentiary hearing on his claims. Uhde's attorney's performance was not deficient or prejudicial.

Uhde's first claim is that his attorney had a conflict of interest and, therefore, could not effectively represent him at trial. (Uhde's Brief at 9-11). He bases his claim on a quote from his trial transcript. The state asked the circuit court to order Uhde not to make objections or argument except through his attorney (69:38). Uhde thought he had the right to raise objections (69:38). Uhde's attorney responded to the circuit court that Uhde "has his perceptions of what he ought to be doing. What I think ought to be done isn't necessarily what Mr. Uhde thinks should be done. So sometimes there's a little bit of a conflict" (69:39).

Uhde's attorney admitted to having conflict with Uhde over what ought to be done. He did not admit to having a conflict of interest. A conflict of interest is defined in the rules of professional conduct as existing if:

> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Wis. SCR § 20:1:7(a) (2009-10).

It is hard for the state to ascertain what conflict of interest Uhde believed existed. Instead, it seems that Uhde equates conflict of interest with conflict. These terms are not interchangeable. Conflict between an attorney and a client is not presumed to be prejudicial.

Uhde asked his attorney if there was a conflict of interest between them and the attorney replied "I don't believe so" (113:51). There is absolutely nothing in the record to support Uhde's claimed conflict of interest.

Without a conflict of interest, there is no deficient performance and no prejudice. Uhde makes no allegations under either prong other than his claimed conflict of interest.

Uhde alleges that his attorney failed to read all the discovery material and that he failed to disclose discovery material to Uhde. (Uhde's Brief at 11-12). The record does not support Uhde's assertions. Uhde fails to make any allegations of prejudice associated with these alleged discovery violations.

Uhde's attorney did review all the discovery materials. When asked if he reviewed police reports, Uhde's attorney said he reviewed all of them (113:16). He reviewed photographs and evidence prior to trial (113:20). Uhde's attorney said he had the discovery material and he reviewed the discovery material (113:41). Uhde accused his attorney of not thoroughly investigating the discovery materials and his attorney replied "That's not true" (113:42).

Uhde alleged that his attorney could not have read all the discovery material or else he would have impeached witnesses. (Uhde's Brief at 14). His attorney explained that Uhde did not see the big picture and instead focused on small discrepancies in witness testimony (113:35-36). His attorney did not think the small discrepancies were significant (113:36).

Uhde's attorney may not have provided Uhde with all of the discovery. He said "there was probably discovery material that I did not provide to you, [Uhde]" (113:40). Uhde's attorney explained that he provided information about the essence of the state's case, and did not prove some documents that did not go to the essence of the case (113:41).

The record does not contain information about what discovery material was missing. Uhde does not allege what documents he did not receive. Uhde does not explain how having this missing material would possibly have changed the outcome of the trial. Uhde seems to believe that not providing a copy of every piece of discovery to the defendant in a case leads to prejudice automatically. There is no such requirement.

Uhde's claims are conclusory and without factual support. There is no ineffective assistance of counsel. Uhde does not provide enough facts to prove either prong of the ineffective assistance of counsel test. As the circuit court found, the state's case was very, very strong (113:98-99).

Uhde's attorney complained that he did not have many facts from which to craft a defense. He said that Uhde had no explanation as to why he was in the woods (113:32). Uhde had no reasonable basis that his attorney could have argued to the jury as to a reason why Uhde was in the woods other than that he had driven the truck into the woods during the high-speed chase (113:32-33).

Uhde's apparent defense theory postconviction is that officers fabricated the high-speed chase. Officers then took a forklift to lower a disabled truck into a marsh and framed Uhde. He still offers no explanation for why he was hiding in the woods that night. His proposed defense is absurd.

His attorney summarized the facts. The state had an officer who was chasing Uhde in the truck, other officers are chasing the truck, the truck crashes, Uhde gets out, the officer is able to identify Uhde because he has known Uhde for a lot of years, Uhde ran off into the woods, and the officers track him and find Uhde in the woods (113:35).

The evidence was overwhelming. Whether Uhde's attorney cross-examined witnesses on whether the truck was white, silver or gray, the outcome would not have changed. Whether Uhde's attorney cross-examined witnesses on whether his hat was light-colored, white, or tan, the outcome would not have changed. Uhde did not suffer prejudice. There was no ineffective assistance of counsel. This court should affirm the circuit court's conclusion.

II. THERE IS NO EVIDENCE OF PROSECUTORIAL MISCONDUCT FOR AN ALLEGED DISCOVERY VIOLATION.

This court previously summarily affirmed the circuit court's decision concluding that Uhde did not allege sufficient facts to warrant an evidentiary hearing on the issue of prosecutorial misconduct (87:1-3). This court reversed only on the issue of whether Uhde was deprived his right to effective assistance of counsel (87:3).

Uhde's allegations of prosecutorial misconduct are not properly before this court. He argues that the state had an obligation to present the truck for inspection. (Uhde's

Brief at 18). He asserts that the state withheld the identity of the vehicle. (*Id.* at 19).

The state did not withhold the identity of the vehicle. Each time the state responded to Uhde's discovery demand, it included the sentence "Photos and physical evidence including recorded statements, may be inspected upon an appointment through the District Attorney's Office" (40, 46, 50).

Uhde's attorney did view the physical evidence the state planned to present at trial. After one of the motion hearings, Uhde, Uhde's attorney, the investigator and the district attorney looked at the exhibits (113:50). The state asked if there was anything else Uhde wanted to look at (113:50). Uhde did not ask to look at the truck (113:50).

The record shows the state offered in writing at least three times and in person at least once, to show Uhde physical evidence. Uhde never requested to see the truck. Uhde cannot have it both ways. He cannot fail to request to see the truck and then on appeal claim that the state refused to let him see the truck. Uhde fails to allege facts that support a discovery violation.

III. THE CIRCUIT COURT DID NOT DEPRIVE UHDE OF AN EVIDENTIARY HEARING.

Uhde complains that the circuit court deprived him of an evidentiary hearing. (Uhde's Brief at 23-28). The state cannot figure out what Uhde is arguing in this section of his brief.

He considers the circuit court's conduct "OUTRAGEOUS" because it withheld the evidentiary hearing altogether on September 23, 2010 (Uhde's Brief at 24). Yet, the circuit court held an evidentiary hearing on September 23, 2010 (113:1-100).

Uhde seems to be mad that the circuit court did not bring the physical exhibits that were admitted at trial to the evidentiary hearing and seems to leap from that to allegations that the circuit court denied him due process. The court did not provide exhibits at the hearing because it felt that Uhde had not satisfied the court that they would be relevant to the hearing (113:47).

This court should summarily reject Uhde's claims and inadequately briefed and unsupported by the record.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this court affirm the circuit court's order denying Uhde's motion for postconviction relief.

Dated this 24th day of August, 2011.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced 3,518 words.

Dated this 24th day of August, 2011.

_____
Christine A. Remington
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 24th day of August, 2011.

_____
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January 15, 2014

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

2012AP1581 State of Wisconsin ex rel. Douglas K. Uhde v. Jeffrey Pugh (L.C. # 2006CF221)

Before Higginbotham, Sherman and Kloppenburg, JJ.

Douglas Uhde appeals an order denying his petition for writ of habeas corpus. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[1] We affirm.

Uhde was convicted of escape in 2007. The complaint alleged that Uhde was an inmate at Fox Lake Correctional Institution and walked away from a job site in Baraboo. Uhde pled no

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

contest to the charge. Uhde now argues that venue in Dodge County was improper because he committed the crime in Sauk County, where he walked away from the job site. We reject the argument.

The "escape from custody" statute that Uhde was convicted under was WIS. STAT. § 946.42(3)(a) (2003-04). A related definition provides that "custody" includes constructive custody of prisoners temporarily outside the institution for the purpose of work. § 946.42(1)(a). Therefore, because Uhde was considered to be in the custody of the prison, Uhde's escape is considered to be from the Fox Lake Correctional Institution. That prison was in Dodge County, and the Dodge County circuit court has jurisdiction over crimes committed there. WIS. STAT. § 302.02(1m)(e) (2003-04). Therefore, venue for Uhde's escape from that prison was proper in that county. *See also* ***Dolan v. State***, 48 Wis. 2d 696, 700-03, 180 N.W.2d 623 (1970) (reaching similar conclusion by applying older versions of similar statutes).

Uhde also argues that the circuit court should have informed him of the requirement for the State to prove venue at the preliminary examination, or possibly in connection with the taking of his plea. However, he cites no authority that imposes that requirement, and we are not aware of any.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals