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COURT OF APPEALS

STATE OF WISCONSIN
C O U R T O F A P P E A L S
DISTRICT III

Case No. 2019AP2065-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RICHARD MICHAEL ARRINGTON,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION AND
ORDER DENYING POSTCONVICTION RELIEF
ENTERED IN BROWN COUNTY CIRCUIT COURT, THE
HONORABLE TIMOTHY A. HINKFUSS, PRESIDING

**SUPPLEMENTAL BRIEF OF
PLAINTIFF-RESPONDENT**

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ARGUMENT

A jury convicted Richard Michael Arrington of both first-degree intentional homicide and felon in possession of a firearm. (R. 201.) After both parties' briefing was complete, this Court entered an order on February 11, 2021. This Court requested supplemental briefing from both parties to address the scope of the remedy. Specifically, this Court asked "whether the entire judgment, including the conviction of being a felon in possession of a firearm, must be reversed and remanded for a new trial, or whether only the judgment of conviction regarding the first-degree intentional homicide charge must be reversed and remanded for a new trial."

The State agrees with Arrington's concession that reversal is not warranted on his felon-in-possession charge, under either the plain-error doctrine or ineffective assistance of counsel. (Arrington's Supplemental Br. 1– 3.) As Arrington notes, prejudice does not exist with his felon-in-possession charge as it was "factually undisputed and conceded by the defense." (Arrington's Supplemental Br. 4.)

Before trial, Arrington stipulated that he had been convicted of a felony, it was subsequently placed on the record, and the jury was so instructed. (R. 77; 269:6–11; 276:30.) Additionally, Arrington testified at trial that he grabbed his gun and fired three shots because he "felt like that was the right thing to do." (R. 275:95.) Finally, defense counsel *asked* the jury to find Arrington guilty of felon-in-possession:

The question of whether or not Mr. Arrington possessed a gun, that's an easy one. I told you on Friday that I was going to be asking you to convict my client because he had a gun and he shouldn't have, and he knew he shouldn't have, and he did it anyway. That's disregard for the law, and the law is going to ask you if he should be held accountable, should he be convicted, and, of course, absolutely there is no dispute about that.

(R. 276:73.)

Consequently, Arrington is correct: “[o]n this record, Arrington cannot reasonably contend that there was prejudice with respect to the jury’s guilty verdict on the felon in possession.” (Arrington’s Supplemental Br. 5.)

CONCLUSION

To answer this Court’s question: The State agrees with Arrington that the scope of the remedy in this case only concerns Arrington’s conviction of first-degree intentional homicide. Reversal is not warranted, or even requested by Arrington, on his felon-in-possession conviction.

Dated this 12th day of March 2021.

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 385 words.

Dated this 12th day of March 2021.

SARA LYNN SHAEFFER
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 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. § 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 12th day of March 2021.

SARA LYNN SHAEFFER
Assistant Attorney General