STATE OF WISCONSIN

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

DISTRICT I

Case Nos. 2021AP1526-CR & 2021AP1527-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RASHEEM D. DAVIS,

Defendant-Appellant.

ON APPEAL FROM JUDGMENTS OF CONVICTION ENTERED IN THE MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE GLENN H. YAMAHIRO, PRESIDING, AND AN ORDER DENYING A MOTION FOR POSTCONVICTION RELIEF, THE HONORABLE FREDERICK C. ROSA, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

In August of 2020, as circuit courts were beginning to hold jury trials again following shutdowns related to the onset of the COVID-19 pandemic, Defendant-Appellant Rasheem D. Davis appeared in court for a hearing in a case where he had filed a speedy trial demand. The State indicated that due to an error in issuing subpoenas to witnesses, it was not prepared to proceed to trial that day. The court ordered the charges against Davis dismissed without prejudice, then went off the record to discuss a date for a bail review in a separate case of Davis's. During that break, the prosecutor learned from a victim-witness advocate that the State's key witness in the case against Davis was present despite the lack of a subpoena and expressed an ability and willingness to proceed to trial in the case that day. Davis did not object, and the jury in the ensuing trial convicted Davis of multiple felonies.

Davis now appeals, arguing that the court lost subject matter jurisdiction when it dismissed the case. He argues that his convictions in the case are invalid because of this supposed lack of subject matter jurisdiction, and he further argues that his pleas in a subsequent case—which he says are premised on the validity of his convictions in the first case—should be withdrawn. Finally, he argues that there was insufficient evidence to convict him of one of the counts against him.

This Court should affirm Davis's convictions. Davis is not correct that the circuit court lacked subject matter jurisdiction when it heard the trial in his first case; the court was allowed to rescind its prior order dismissing the case, and it therefore had both subject matter jurisdiction and competency to hear the case. Davis's second and third issues are premised on his success in the first; because he does not prevail on the first issue, he cannot prevail on the second or third. And finally, there was ample evidence for the jury to find Davis guilty of robbery.

ISSUES PRESENTED

1. Did the circuit court have the requisite subject matter jurisdiction and competency to hear Davis's case after rescinding an order—made during the same hearing—dismissing the case without prejudice?

The circuit court denied Davis's motion for postconviction relief, concluding that it had retained subject matter jurisdiction when it rescinded its order dismissing the case without prejudice. (R. 68:6.)[1]

This Court should affirm.

2. Did Davis receive ineffective assistance from his trial counsel when counsel did not object to the court's supposed lack of personal jurisdiction over Davis?

The circuit court denied Davis's motion for postconviction relief, concluding that Davis did not receive ineffective assistance of counsel because counsel's performance did not prejudice him. (R. 68:6–7.)

This Court should affirm.

3. Was Davis entitled to withdraw his guilty plea in the second case based on the supposed defect in his conviction in the first case?

The circuit court rejected Davis's request for plea withdrawal, concluding that because it was predicated on his claim that his conviction in the first case was not valid—which claim the court rejected—there was no basis for allowing Davis to withdraw his plea. (R. 68:7.)

This Court should affirm.

4. Was there sufficient evidence to convict Davis of robbery?

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[1] Citations to "(R. __:__.)" are to the record in 2021AP1527-CR unless otherwise indicated.

Davis raises this issue for the first time on appeal.

This Court should affirm Davis's conviction for robbery.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. This Court can resolve this case by applying settled legal principles to the facts.

STATEMENT OF THE CASE

This consolidated appeal stems from Davis's convictions in two separate cases. In the first case, Milwaukee County case number 19CF4828, a jury found Davis guilty of multiple counts, including false imprisonment and robbery by use of force, for an attack on ARW during which he stole her phone. (R. 69:1.) In the second case, Milwaukee County case number 20CF774, Davis pleaded guilty to one count of fleeing an officer. (R-2021AP1526-CR 14:1.)

The attack on ARW took place on the evening of October 28, 2019, at Milwaukee Area Technical College. (R. 2:1.) According to the criminal complaint, Davis approached ARW—with whom he was in a relationship—as she left class. (R. 2:3.) ARW told Davis to leave her alone and tried to walk away. (R. 2:3.) Davis followed ARW through multiple buildings of the MATC campus, leading ARW to seek refuge in a women's restroom. (R. 2:3.) However, Davis followed ARW into the restroom and forced his way into the stall where ARW was hiding. (R. 2:3.) ARW tried to flee under the wall of the bathroom stall, but Davis grabbed her by the neck, lifted her up, and bit her face. (R. 2:3.) Davis then demanded ARW's phone and screamed at her to text her family and say that she and Davis were together. (R. 2:3.) When ARW broke down crying, Davis took the phone and left. (R. 2:3.)

The State charged Davis with false imprisonment, robbery, battery, disorderly conduct, and bail jumping. (R. 2:1–2.) As the case progressed, trial was delayed due to court shutdowns amid the COVID-19 pandemic despite a speedy trial request by Davis. (R. 37:2–3.) At a hearing on August 3, 2020, the prosecutor indicated that it was not ready to proceed to trial in the first case because subpoenas were mistakenly not sent. (R. 28:2.) In response, Davis asked for dismissal of the charges. (R. 28:2.) The court agreed to dismiss the case without prejudice. (R. 28:3.) The parties then went off the record to discuss scheduling in the second case. (R. 28:3.) When they came back on the record, the prosecutor relayed that she had been informed by the victim-witness coordinator that ARW was present for trial, despite the lack of a subpoena. (R. 28:4.) The court indicated that it would recall the case later that morning to begin the trial, and asked Davis's counsel if that worked; counsel offered no objection. (R. 28:4.) The entire hearing took less than five minutes. (R. 28:1, 5.)

At the end of a two-day trial, a jury found Davis guilty as charged. (R. 36:48.) Davis then agreed to plead guilty in the second case in exchange for the dismissal of two charges. (R. 35:2.) After the plea colloquy and comments by ARW and the parties, the court sentenced Davis to a total of 30 months of initial confinement and 24 months of extended supervision in the first case, and to a total of 15 months of initial confinement and 12 months of extended supervision—consecutive to the first—in the second case. (R. 35:24–25.)

After sentencing, Davis filed a motion seeking postconviction relief. (R. 42.) In it, Davis argued that the court's dismissal of the charges in the first case divested it of subject matter jurisdiction, and that his convictions in that case were therefore invalid. (R. 42:3–4.) Davis further argued that trial counsel was ineffective for failing to object to a lack of personal jurisdiction (R. 42:5–6), and he sought to

withdraw his plea in the second case because, he claimed, the putative invalidity of his convictions in the first case rendered his plea in the second invalid (R. 42:7–8).[2]

In a written decision and order, the circuit court denied Davis's motion. (R. 68:1.) The court concluded that it had effectively rescinded the order dismissing the charges against Davis, and that it therefore did not lack subject matter jurisdiction to hear the case. (R. 68:6.) The court further determined that because Davis's second and third arguments hinged on the first, and because he had not prevailed on the first, he was not entitled to relief on the latter two, either. (R. 68:6–7.)

Davis now appeals.

STANDARDS OF REVIEW

An appellate court "independently review[s] questions of subject matter jurisdiction and competency." *City of Eau Claire v. Booth*, 2016 WI 65, ¶ 6, 370 Wis. 2d 595, 882 N.W.2d 738.

Whether a defendant received ineffective assistance of counsel is a mixed question of law and fact. *Strickland v. Washington*, 466 U.S. 668, 698 (1984). A trial court's findings of fact, "the underlying findings of what happened," will not be overturned unless clearly erroneous. *State v. Pitsch*, 124 Wis. 2d 628, 634, 369 N.W.2d 711 (1985). The ultimate determination of whether counsel's performance was deficient and prejudicial are questions of law which this Court reviews independently. *Id.*

"Whether a plea is knowing, intelligent, and voluntary is a question of constitutional fact." *State v. Brown*, 2006 WI 100, ¶ 19, 293 Wis. 2d 594, 716 N.W.2d 906. An appellate

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[2] Davis also sought an adjustment to his sentence credit, which is not at issue in this appeal.

court will "accept the circuit court's findings of historical and evidentiary facts unless they are clearly erroneous," but it independently determines "whether those facts demonstrate that the defendant's plea was knowing, intelligent, and voluntary." *Id.*

When "determining whether the evidence was sufficient to support a conviction is that" this Court "may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Hayes*, 2004 WI 80, ¶ 56, 273 Wis. 2d 1, 681 N.W.2d 203 (quoting *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990)).

ARGUMENT

I. The circuit court did not lose subject matter jurisdiction when it dismissed Davis's case without prejudice, then reversed that decision moments later.

A. Wisconsin's circuit courts have subject matter jurisdiction over all criminal cases, and they have the power to exercise that jurisdiction.

"Article VII, Section 8 of the Wisconsin Constitution provides, in pertinent part: 'Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state . . . .'" *Booth*, 370 Wis. 2d 595, ¶ 7 (quoting Wis. Const. art. VII, § 8). That section of the constitution establishes a court's subject matter jurisdiction, which "refers to the power of a court to decide certain types of actions." *Id.* (quoting *State v. Smith*, 2005 WI 104, ¶ 18, 283 Wis. 2d 57, 699 N.W.2d 508). Because that power "is granted to circuit courts by [the] constitution, it cannot be 'curtailed by state statute.'" *Id.* (quoting *Village of*

Trempealeau v. Mikrut, 2004 WI 79, ¶ 8, 273 Wis. 2d 76, 681 N.W.2d 190). Indeed, "a circuit court is never without subject matter jurisdiction." *Mikrut*, 273 Wis. 2d 76, ¶ 1.

That said, "a circuit court's ability to exercise the subject matter jurisdiction vested in it by the constitution may be affected by noncompliance with statutory requirements pertaining to the invocation of that jurisdiction in individual cases." *Booth*, 370 Wis. 2d 595, ¶ 7 (quoting *Mikrut*, 273 Wis. 2d 76, ¶ 9). "Noncompliance with statutory mandates affects a court's competency and 'a court's "competency," as the term is understood in Wisconsin, is not jurisdictional at all, but instead, is defined as "the power of a court to exercise its subject matter jurisdiction" in a particular case.'" *Id.* (quoting *Smith*, 283 Wis. 2d 57, ¶ 18).

"[C]ourts have the authority to reconsider their own rulings." *Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶ 44, 298 Wis. 2d 468, 727 N.W.2d 546. Under Wis. Stat. § 806.07, a court may reconsider its prior ruling sua sponte. *Larry v. Harris*, 2008 WI 81, ¶ 23, 311 Wis. 2d 326, 725 N.W.2d 279 ("[C]ircuit courts are vested with the authority to grant relief from their judgments, on their own motion under Wis. Stat. § 806.07."). This includes the power to reconsider dismissal of a case. *In re Paternity of M.T.H., State v. A.G.R., Jr.*, 140 Wis. 2d 843, 846–48, 412 N.W.2d 164 (Ct. App. 1987).

In *In re Paternity of M.T.H.*, the defendant "attack[ed] the trial court's jurisdiction to entertain a motion to reopen the judgment," by asserting "that a dismissal with prejudice gives a defendant the full legal relief to which he or she is entitled and is tantamount to a judgment on the merits." *In re Paternity of M.T.H.*, 140 Wis. 2d at 846. According to the defendant, the "prejudicial dismissal[ ]" deprived "the court of jurisdiction to grant relief from such a judgment." *Id.* This

Court disagreed. *Id.* Examining Wis. Stat. § 806.07,[3] this Court noted that the "statutory language [of section 806.07] ma[de] no exception for voluntary dismissals with prejudice." *Id.* at 847. Moreover, the court found that the "defendant ha[d] demonstrated no reason to treat a dismissal with prejudice any differently from any other variety of judgment, order or stipulation." *Id.* As a result, this Court concluded that "[S]ec. 806.07 provides a court with jurisdiction to relieve a party from a voluntary dismissal with prejudice." *Id.*

B. Because the circuit court had the authority to revisit its decision to dismiss the case against Davis, it continued to have subject matter jurisdiction to hear Davis's trial.

There is no question that the circuit court had both subject matter jurisdiction and competency to hear the State's case against Davis when the charges against Davis were filed. There is also no question that the court dismissed those charges against Davis without prejudice, then effectively rescinded that dismissal and allowed the case to proceed to trial. (R. 68:6.) The question presented in this case is whether the court had the ability to rescind its dismissal of the charges against Davis. If so, then the court maintained both subject matter jurisdiction and competency to hear the case and Davis's convictions must stand. And that is the case here: the circuit court acted properly by rescinding its order dismissing the charges against Davis, so everything that followed was proper. *See Butcher*, 298 Wis. 2d 468, ¶ 44.

Davis argues that the question in this case is not one of competency but one of subject matter jurisdiction, which,

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[3] "On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for" a number of enumerated reasons, including any reason "justifying relief from the operation of the judgment." Wis. Stat. § 806.07(1).

according to him, "expired" immediately upon the court's dismissal of the charges against him. (Davis's Br. 18–19.) According to Davis, the dismissal in this case was a "final disposition" that terminated the circuit court's subject matter jurisdiction. (Davis's Br. 19.) Davis's support for his position comes from *State v. Randle*, 2002 WI App 116, 252 Wis. 2d 743, 647 N.W.2d 324. (Davis's Br. 18–19.) But *Randle* is inapposite; it considered territorial jurisdiction, not subject matter jurisdiction.[4] *See Randle*, 252 Wis. 2d 743, ¶¶ 17–21. And as discussed, "a circuit court is never without subject matter jurisdiction." *Mikrut*, 273 Wis. 2d 76, ¶ 1. The only question here is whether the court had the power to exercise that jurisdiction; that is, whether the court had competency. Because the court had the authority to revisit its ruling, it also had competency to hear Davis's trial.

Even if Davis is correct that the issue in this case is one of subject matter jurisdiction, however, his claim still fails. The term "final disposition" does not appear to have been defined in any Wisconsin cases in this context. The most relevant[5] statutory definition, however, supports the State's argument that the circuit court could properly revisit its order dismissing the charges against Davis. Wisconsin Stat. § 893.13(1) says that "'final disposition' means the end of the

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[4] To be sure, this Court in *Randle* likened aspects of territorial jurisdiction to subject matter jurisdiction, saying that "once [such] jurisdiction attaches, it will continue until a final disposition of a case." *State v. Randle*, 2002 WI App 116, ¶ 20, 252 Wis. 2d 743, 647 N.W.2d 324. But the question posed by *Randle* was whether Wis. Stat. § 939.03 applied to territorial jurisdiction as well as personal jurisdiction. *See id.* ¶¶ 10, 12. It did not consider the definition of "final disposition" or what power a court had to reconsider certain orders.

[5] Certain statutes concern the "final disposition" of human remains, for example. *E.g.* Wis. Stat. § 154.30. Clearly the term means something entirely different in such a context, and is not relevant here.

period in which an appeal may be taken from a final order or judgment of the trial court." Although not a criminal statute, Wis. Stat. § 893.13 is notable because it separates the concept of a "final disposition" from the concept of a "final order or judgment"—entry of a "final order or judgment" does *not* constitute "final disposition" of a case. Moreover, at least one other statute refers to Wis. Stat. § 893.13 as defining "final disposition" for purposes of a criminal proceeding. *See* Wis. Stat. § 895.457(4)(a) (tolling statute of limitations in certain cases for "the period beginning with the commencement of a criminal proceeding . . . *and ending with the final disposition, as defined in s. 893.13(1), of the criminal proceeding*") (emphasis added).

Thus, even if Davis is correct that a circuit court loses subject matter jurisdiction upon "final disposition" of a case, such final disposition does not occur immediately upon entry of a final *order* for purposes of appeal. The court here was free to revisit its order dismissing charges moments after issuing it. And because it effectively rescinded that order, it retained subject matter jurisdiction through the entire course of Davis's trial.

Davis complains that the circuit court failed to identify a conduit for its authority to rescind its order granting dismissal. (Davis's Br. 20–21.) This is irrelevant; this Court can affirm a circuit court's decision on different grounds than those upon which the circuit court rested its decision. *See, e.g.*, *State v. Smiter*, 2011 WI App 15, ¶ 9, 331 Wis. 2d 431, 793 N.W.2d 920. Moreover, to the extent Davis's argument is that the circuit court lacks the inherent authority to revisit dismissal of charges mere moments after issuing an order, case law suggests otherwise. *See, e.g.*, *Butcher*, 298 Wis. 2d 468, ¶ 44 ("courts have the authority to reconsider their own rulings").

In re Paternity of M.T.H. is also instructive. In that case, this Court held that Wis. Stat. § 806.07 allowed a circuit

court to reopen a case following an order granting dismissal with prejudice. *See In re Paternity of M.T.H.*, 140 Wis. 2d at 847. This Court so held because nothing in the statutory language of Wis. Stat. § 806.07 made an exception for dismissal of a case with prejudice. *Id.* The same logic applies here. If Wis. Stat. § 806.07 allows a court to revisit a decision granting dismissal with prejudice, then certainly it allows a court to revisit a decision to grant dismissal without prejudice; neither is excepted from the statutory language. *See* Wis. Stat. § 806.07(1). Regardless of whether the circuit court specifically acted under Wis. Stat. § 806.07, the import of the statute and of this Court's decision in *In re Paternity of M.T.H.* is clear: dismissal of an action does not automatically and irrevocably divest a circuit court of competency to act. Instead, the court maintains authority to take certain actions, including revisiting an order of dismissal.[6]

Finally, Davis suggests that *State v. Asfoor*, 75 Wis. 2d 411, 249 N.W.2d 529 (1977), dictates that the dismissal of all charges in the first case against Davis was a "final disposition." (Davis's Br. 22.) It does not. *Asfoor* concerned the dismissal and subsequent reinstatement of felony charges against the defendant. *Asfoor*, 75 Wis. 2d at 422–23. Asfoor argued, among other things, that the circuit court lost

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[6] The State acknowledges that the applicability of Wis. Stat. § 806.07 to criminal cases is debatable. For example, the Wisconsin Supreme Court held in *State v. Henley* that the statute is not available to criminal defendants as an alternative avenue for seeking a new trial. *See State v. Henley*, 2010 WI 97, ¶¶ 67–71, 328 Wis. 2d 544, 787 N.W.2d 350. However, the court's decision in *Henley* was largely premised on the fact that other statutes controlled the appeal process, including the process for seeking a new trial in the interest of justice. *See id.*

Regardless, the State's position is not that Wis. Stat. § 806.07 confers competency on circuit courts in criminal cases. Rather, the State's point is that the statute establishes that a court does not lose competency by dismissing charges without prejudice.

jurisdiction over the dismissed charges when the court originally granted dismissal. *Id.* The Wisconsin Supreme Court disagreed, stating that the circuit court did not lose jurisdiction because "[t]he dismissal by the circuit judge of two of the three counts in the information was not the final disposition. Jeopardy had not attached. The dismissal was without prejudice and the charges could be reinstated. The circuit court had subject-matter jurisdiction as to the original charges." *Id.* at 424 (citations omitted).

Importantly, the court in *Asfoor* did *not* hold that dismissal of all three counts in the information would have constituted a "final disposition." *See id.* Moreover, the other reasons for the court's decision to sanction the reinstatement of the charges against the defendant are also present here; jeopardy did not attach, and the dismissal was without prejudice. *Id.* Thus, if anything, *Asfoor* supports the circuit court's action here.

Whether the question in this case is one of subject matter jurisdiction or one of competence, the end result is the same. A court does not lose all ability to act as soon as it orders the dismissal of charges against a defendant. The court retains certain authority, including the authority to revisit and rescind the dismissal order. That is what happened in this case; the circuit court maintained jurisdiction and the power to exercise it throughout. This Court should affirm.

II. Davis's counsel was not ineffective because the circuit court had personal jurisdiction over Davis.

A. A defendant does not receive ineffective assistance of counsel for counsel's decision not to pursue a meritless argument.

To establish ineffective assistance of counsel, a defendant must prove the familiar two-pronged test: both that counsel's performance was deficient, and that the deficient performance prejudiced the defense. *State v. Smith*, 207 Wis. 2d 258, 273, 558 N.W.2d 379 (1997). With respect to the "performance" prong of the test, a strong presumption exists that counsel acted properly within professional norms, and the defendant must demonstrate that his attorney made serious mistakes that could not be justified in the exercise of objectively reasonable professional judgment, deferentially considering all the circumstances from counsel's contemporary perspective to eliminate the distortion of hindsight. *Strickland*, 466 U.S. at 689–91. Moreover, "counsel is not required to argue a point of law that is unclear," *State v. Thayer*, 2001 WI App 51, ¶ 14, 241 Wis. 2d 417, 626 N.W.2d 811, nor is counsel required to pursue claims that are without merit. *See State v. Dalton*, 2018 WI 85, ¶ 53, 383 Wis. 2d 147, 914 N.W.2d 120. In short, trial counsel is not ineffective for "failing to make meritless arguments." *State v. Allen*, 2017 WI 7, ¶ 46, 373 Wis. 2d 98, 890 N.W.2d 245.

B. Davis does not—and cannot—show ineffective assistance of counsel because the circuit court had personal jurisdiction over Davis, so counsel's performance was neither deficient nor prejudicial.

Davis claims that the trial court was without personal jurisdiction over him because it lacked subject matter jurisdiction to hear his case after dismissing the charges

against him, then rescinding that order and moving to trial. (Davis's Br. 24–25.) He further claims that his attorney was ineffective for failing to object to this supposed lack of jurisdiction. (Davis's Br. 24–25.) While the structure of Davis's argument suggests a relationship between subject matter jurisdiction and personal jurisdiction, the two are distinct concepts. *See Rasmussen v. General Motors Corp.*, 2011 WI 52, ¶ 15 n.19, 335 Wis. 2d 1, 803 N.W.2d 623 ("'Personal jurisdiction' is distinct from 'subject matter jurisdiction' in that personal jurisdiction refers to the court's power to exercise jurisdiction over a given individual. By contrast, subject matter jurisdiction is the power under the Wisconsin Constitution to hear a particular controversy.") (citations omitted).

Regardless, this Court can dispose of this claim easily. If the circuit court did lose subject matter jurisdiction over Davis's case, then it is not required to reach this issue because the first issue would be dispositive. If, however, the court did not lose subject matter jurisdiction, then Davis has no argument remaining that personal jurisdiction was improper. Any objection to the court's personal jurisdiction would have been meritless, and counsel was not ineffective for failing to make it. *See Allen*, 373 Wis. 2d 98, ¶ 46. Because the circuit court did not lose subject matter jurisdiction, this Court should affirm.

III. Davis was not entitled to withdraw his guilty pleas.

A. A defendant seeking to withdraw his plea to a criminal charge must demonstrate that failure to allow plea withdrawal will result in a manifest injustice.

When a defendant seeks to withdraw his plea after sentencing, he must prove by clear and convincing evidence that plea withdrawal is necessary to avoid a manifest

injustice. *Brown*, 293 Wis. 2d 594, ¶ 18. "The clear and convincing standard for plea withdrawal after sentencing, which is higher than the 'fair and just' standard before sentencing, 'reflects the State's interest in the finality of convictions, and reflects the fact that the presumption of innocence no longer exists.'" *State v. Taylor*, 2013 WI 34, ¶ 48, 347 Wis. 2d 30, 829 N.W.2d 482 (citation omitted).

B. Davis failed to show that a "manifest injustice" would arise from refusing to allow him to withdraw his pleas.

As with the second issue, the premise of Davis's argument on this issue is that the court lost subject matter jurisdiction in the first case. (Davis's Br. 27.) Davis essentially argues that reversal of his convictions in the first case would render his pleas in the second case invalid. (Davis's Br. 27.) Because the circuit court did not lose jurisdiction—thus rendering Davis's convictions in the first case valid—and because Davis makes no other argument supporting plea withdrawal, this Court should affirm the circuit court's order denying Davis's request to withdraw his plea. (R. 68:7.)

However, even if Davis's convictions in the first case are infirm, this Court should still affirm the denial of Davis's motion to withdraw his plea in the second case because he has failed to show that a "manifest injustice" would result from denial of his request. *See Brown*, 293 Wis. 2d 594, ¶ 18. Davis argues that his plea was not knowing, intelligent, and voluntary, but his basis for that argument is faulty. Davis pled guilty to one count of fleeing. (R. 35:4.) He acknowledged the maximum penalty he was facing, the fact that charges were being dismissed and read in, and that he was giving up the rights listed in the plea questionnaire, including the right to a trial by jury. (R. 35:3–7.) In short, Davis knew what he was pleading to and the consequences of such action; he admits as much. He offers zero law supporting the proposition

that a supposed misunderstanding like the one at issue here constitutes an "extrinsic factor" invalidating a plea. (Davis's Br. 25–28.) Even if his convictions in a separate case with a separate factual basis are reversed, that has no bearing on his pleas in the second case; those pleas are valid and should stand.

IV. The State presented sufficient evidence to support Davis's robbery conviction.

A. An appellate court's review of a jury verdict is highly deferential.

For a criminal conviction to satisfy due process, the State must prove each essential element of a charged crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 324 (1979); *Poellinger*, 153 Wis. 2d at 501. On review of a "sufficiency" challenge, the "appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *Poellinger*, 153 Wis. 2d at 507. Furthermore, "[i]f any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt . . . ." *Id.*

Although the trier of fact must be convinced that the evidence is sufficiently strong to exclude every reasonable hypothesis of the defendant's innocence, this is *not* the test on appeal. *Poellinger*, 153 Wis. 2d at 503. "[A]n appellate court need not concern itself in any way with evidence which might support other theories of the crime. An appellate court need only decide whether the theory of guilt accepted by the trier of fact is supported by sufficient evidence to sustain the verdict rendered." *Id.* at 507–08.

B. The jury reasonably determined that Davis intended to permanently deprive ARW of her phone.

Finally, Davis argues that no reasonable jury could have found that he intended to permanently deprive ARW of her phone—a requisite of the robbery conviction. (Davis's Br. 29–30.) As support, he notes that he was in a romantic relationship with ARW, offered her "his personal effects"—photographs and a pack of cigarettes—as collateral for return of the phone, and did in fact return her phone after she spoke to the police. (Davis's Br. 29–30.) None of those facts matter, however. The question is whether it was reasonable for the jury to believe that Davis intended to permanently deprive ARW of her phone *at the time he took it*.

The State presented evidence that Davis physically attacked ARW in a bathroom stall in order to take her phone. (R. 31:64.) Davis threw something in the toilet, claiming it was her phone, then left the bathroom with the phone. (R. 31:64–65.) ARW had to chase Davis down through a fire exit in order to confront him about the phone. (R. 31:65.) It was only then that Davis offered her the "collateral" for her phone. (R. 31:67.) When ARW said that she did not want the collateral, she just wanted her phone, Davis told her to meet him around the corner, but did not show up. (R. 31:68.) ARW then told police—who were arrive in response to the fire exit's alarm being tripped—what happened. (R. 31:68–69.) Only after all of that did Davis return ARW's phone to her. (R. 31:71.)

The jury reasonably believed that Davis's actions indicated an intent to permanently deprive ARW of her phone. Davis took the phone by force and then pretended to destroy it. He fled with the phone. He lied about meeting with ARW to return the phone. He offered a few dollars' worth of "collateral" for it. All of this suggests an effort to keep the phone. It does not matter that Davis eventually returned the

phone—whether because he had a change of heart or because ARW went to the police—what matters is whether the jury could have believed that Davis had the requisite intent at the time of the offense. The jury reasonably believed as much, so this Court should affirm.

CONCLUSION

For the reasons discussed, this Court should affirm Davis's judgments of conviction and the circuit court's order denying postconviction relief.

Dated this 8th day of February 2022.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 5,025 words.

Dated this 8th day of February 2022.

Electronically signed by:

John A. Blimling
JOHN A. BLIMLING
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 8th day of February 2022.

Electronically signed by:

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