**State of Wisconsin**
**Court of Appeals**
**District 1**
**Appeal No. 2024AP001875-CR**

State of Wisconsin,

Plaintiff-Respondent,

v.

Nicolas J. Bergner,

Defendant-Appellant.

**On appeal from a judgment of the Milwaukee County Circuit Court, The Honorable Anderson M. Gansner and The Honorable Lena Taylor, presiding**

# Defendant-Appellant's Brief

Law Offices of Jeffrey W. Jensen
161 S. First Street, Suite 200
Milwaukee, WI 53204

414-224-9484
jensen@milwaukeecriminaldefense.pro

Attorneys for the Appellant

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## Statement on Oral Argument and Publication

The issue presented by this appeal is controlled by well-settled law. Therefore, the appellant does not recommend either oral argument or publication.

## Introduction

NIcolas Bergner was charged with a third offense operating under the influence of alcohol, and with a third offense operating with a prohibited alcohol concentration. He entered not guilty pleas to both counts and, eventually, the matter was called for trial. Prior to the start of jury selection, the judge ordered that a numbers-only selection process be used. The court made no findings to support the order, but defense counsel did not object. A numbers-only selection procedure was used. The jury found Bergner not guilty of operating under the influence, but guilty of operating with a prohibited alcohol concentration. Bergner filed a postconviction motion alleging that his trial counsel was ineffective for failing to object to the numbers-only selection process. The circuit court denied the motion without conducting an evidentiary hearing Bergner appealed.

## Statement of the Issue

I. Did the circuit court err in denying Bergner's postconviction motion alleging ineffective assistance of counsel without conducting a hearing?

**Answered by the circuit court**: No. Defense counsel's performance was not deficient for failing to object to a numbers-only procedure during jury selection because the procedure is common and it is comfortable for the jury panel. Further, according to the circuit court, even if the numbers-only procedure was objectionable, counsel's failure to object was not prejudicial.

The court of appeals should reverse the circuit court's order denying Bergner's postconviction motion and remand the matter for an evidentiary hearing into the motion.

## Summary of the Argument

**I. Ineffective assistance of counsel.** Bergner's postconviction motion alleged that defense counsel's performance was deficient because he failed to object to the judge's order that a numbers-only procedure be used during jury selection. Further, the motion alleged that counsel's failure to object was prejudicial because the numbers-only procedure suggested to the jury that Bergner was a dangerous person.

The circuit court denied the motion without conducting an evidentiary hearing. The court suggested that counsel's failure to object was not deficient performance because the numbers-only selection process is widely used, and it is for the convenience and comfort of the jurors. Further, the circuit court held that Bergner's allegation that counsel's error was prejudicial was "speculation" because he provided no factual "support" to establish that the jury was prejudiced.

As will be set forth in more detail below, in deciding whether to set a postconviction motion for hearing, the court must assume that all well-pleaded facts are true. Here, the motion alleged that counsel's performance was indisputably deficient because he failed to object to the numbers-only jury selection procedure ordered by the court. The Wisconsin Supreme Court has made clear that the circuit court may not restrict "any" juror information during *voir dire* except where the court has made proper findings. Here, the motion alleged that no such findings were made; and, therefore, counsel's failure to object was deficient.

Further, the circuit court held that the use of a numbers-only selection procedure was not prejudicial because Bergner's allegations of prejudice are "speculation", and that Bergner provided no factual support for the claim. The circuit court did not identify what additional factual "support" might have been provided. Does the circuit court mean to suggest

that Bergner should have provided affidavits from the jurors to the effect that the use of a numbers-only selection procedure made them believe that Bergner was a dangerous person? If so, this places an impossible burden on Bergner. By law, jurors are incompetent to present testimony concerning the jury's deliberations on the verdict. It is impossible, then, for Bergner to produce any factual support for the allegation that the jury was prejudiced by the numbers-only selection process.

# Statement of the Case

## I. Procedural History

On September 16, 2019, the defendant-appellant, Nicolas Bergner (hereinafter "Bergner"), was charged in count one with a third offense operating under the influence of alcohol; and, in count two, with a third offense operating with a prohibited blood-alcohol concentration [R:1] He made his initial appearance on October 18, 2019, and entered a not guilty pleas to the charges. [R:73-4]

The case languished in the Milwaukee County Circuit Court for nearly four years.[1] Finally, on July 17, 2023, Bergner filed a motion to dismiss the case on the grounds of a constitutional speedy trial violation. [R:30] The motion was

[1] To be fair, some of the delay was due to the fact that the courts were unable to try cases during the COVID-19 pandemic.

filed on a day that the case was set for trial. The state moved to adjourn the trial, and the court held an immediate hearing on the motion. The court denied the motion saying, "Okay. I mean, I just think, you know, pandemic, both sides have requested multiple adjournments at this point, and so I don't think that it's sufficient here to grant the Defense motion to dismiss. I'll deny that and I will grant the State's motion to adjourn the trial. We'll put it back on (the) trial calendar." [R:64-6] The case was set for trial on October 9, 2023.

Once again, the state filed a motion to adjourn the October trial date because one of the state's witnesses, Officer Krakau, was unavailable "for a wedding." [R:32] This prompted Bergner to file a second motion to dismiss on constitutional speedy trial grounds on August 25, 2023. [R:33]

The court addressed the motion at a final pretrial held on September 9, 2023. The court denied the state's motion to adjourn. [R:61-9] The court held Bergner's motion to dismiss in abeyance. [R:61-9]

When the case was called for trial on October 9, 2023, the state was still without Officer Krakau; but, nevertheless, the prosecutor indicated that the state was ready to proceed. [R:62-9] Consequently, the defense indicated that they were not ready to proceed. According to defense counsel, she was aware that Officer Krakau would not be appearing at trial, and, therefore, counsel assumed that either the case would be

dismissed, or the court would grant the state another adjournment. Thus, defense counsel did not make arrangements for the defendant's out-of-state expert witness to be present. [R:62-7 *et seq.*] The state objected to an adjournment, and indicated that he would proceed without Officer Krakau. [R:61-10]

The court initially denied the defense motion to adjourn. [R:62-11] Later, after in-chambers discussions, and efforts to arrange for the defense expert to testify remotely by Zoom, the court decided to grant one final adjournment of the trial. [R:62-14,15] The case was set for trial on January 16, 2024.

The matter proceeded to jury trial beginning on January 16, 2024. Prior to the start of jury selection, the court made the following order: "And then I should say, when I ask you all questions, if your answer to my question is yes, just raise your hand and keep your hand in the air and I'll call on you and ask you for your juror number. Okay? *You don't need to use your --your -- your first or last name or any of your names here in court today. You can just go by your juror number to give you a little -- a little bit of privacy. Okay?*" [emphasis provided; R:88-23, 24] The court made no findings that a numbers-only selection process was appropriate. Defense counsel did not object to using a numbers-only procedure during jury selection, and he did not prompt the court to make proper findings..

During the jury selection process, then, the panel

members were consistently addressed by their juror numbers, and not by their names.

In announcing the jury that was selected, the judge said, "I'm going to read people's names . . ." but then he read only the juror numbers. [R:88-108]

After a little more than a day's worth of testimony, the case was submitted to the jury. The following day, the jury returned a verdict finding Bergner not guilty of operating under the influence of alcohol, but guilty of operating with a prohibited alcohol concentration. [R:49]

The court proceeded directly to sentencing. The court sentenced Bergner to 48 days in jail with work-release. [R:91-21; R:51]

Bergner timely filed a notice of intent to pursue post-conviction relief. [R:53] On August 26, 2024, Bergner filed a postconviction motion seeking to vacate his conviction and to order a new trial because defense counsel was ineffective for failing to object to the court's order for a numbers-only jury selection process. [R:92].

Only three days later, and without conducting an evidentiary hearing, the circuit court entered a written order denying Bergner's postconviction motion. [R:94] According to the circuit court, "[B]ecause counsel did not object to the procedure, the defendant's claim must be analyzed under the standard of ineffective assistance of counsel." [R:94-1] The

court wrote, "[T]he court is not persuaded that counsel was deficient for failing to object to a 'numbers jury' under the circumstances of this case. *Referring to jurors by their juror numbers during voir dire is a relatively common practice, often adopted without objection, for the convenience of the parties, to avoid mispronouncing names, and for juror comfort*." [emphasis provided; R:94-3]

Concerning the prejudice prong, the circuit court reasoned, "The defendant's claim of prejudice is nothing more than speculation. Again, *the defendant has provided no support for a finding that the jury would interpret the court procedure as implying dangerousness on his part given the context of the trial.*" [emphasis provided; R:94-3]

Bergner timely filed a notice of appeal.

## II. Factual Background

Officer Alan German of the Franklin Police Department testified that on August 22, 2019 he was on routine patrol. [R:88-119, 120] German conducted a routine registration check on a vehicle that had passed him. [R:88-121] The registration of the vehicle was expired, so he conducted a traffic stop. Bergner was the driver of the vehicle. *Id.* According to German, once he had contact with Bergner, he noticed that Bergner's eyes were bloodshot, and German could smell the odor of an alcoholic beverage. [R:88-122] Bergner said he had

one beer, but then later said it was two beers. [R:88-128, 129] German conducted the field sobriety tests on Bergner; and, according to the officer, Bergner failed the horizontal gaze nystagmus test, the walk-and-turn test, and the alphabet test. [R:88-139 to 142]. German arrested Bergner for operating under the influence of alcohol.

Back at the station, Bergner submitted to an Intoximeter test. The test was administered by Officer Krakau. [R:63-36] The result was .08 grams of alcohol per 210 liters. [R:88-153; R:63-38]

Bergner called Ronald Henson as an expert witness. According to Henson, the field tests administered were not conclusive as to whether Bergner's ability to drive was impaired. [R:63-53] Further, according to Henson, given the margin of error for the Intoximeter machine, Bergner's actual blood-alcohol concentration was between .075 and .085. *Id.*

Bergner did not testify.

# Argument

## I. The circuit court erred in denying Bergner's postconviction motion for a new trial on the grounds of ineffective assistance of counsel.

Bergner's postconviction motion alleged that defense counsel's performance was deficient because he failed to object to the judge's order that a numbers-only procedure be used during jury selection. Further, the motion alleged that counsel's failure to object was prejudicial because the numbers-only procedure suggested to the jury that Bergner was a dangerous person.

The circuit court denied the motion without conducting an evidentiary hearing. The court suggested that counsel's failure to object was not deficient performance because the numbers-only selection process is widely used, and it is for the convenience and comfort of the jurors. Further, the circuit court held that Bergner's allegation that counsel's error was prejudicial was "speculation" because he provided no factual "support" to establish that the jury was prejudiced.

As will be set forth in more detail below, in deciding whether to set a postconviction motion for hearing, the court must assume that all well-pleaded facts are true. Here, the motion alleged that counsel's performance was indisputably

deficient because he failed to object to the numbers-only jury selection procedure ordered by the court. The Wisconsin Supreme Court has made clear that the circuit court may not restrict "any" juror information during *voir dire* except where the court has made proper findings. Here, the motion alleged that no such findings were made; and, therefore, counsel's failure to object was deficient.

Further, the circuit court held that the use of a numbers-only selection procedure was not prejudicial because Bergner's allegations of prejudice are "speculation", and that Bergner provided no factual support for the claim. The circuit court did not identify what additional factual "support" might have been provided. Does the circuit court mean to suggest that Bergner should have provided affidavits from the jurors to the effect that the use of a numbers-only selection procedure made them believe that Bergner was a dangerous person? If so, this places an impossible burden on Bergner. By law, jurors are incompetent to present testimony concerning the jury's deliberations on the verdict. It is impossible, then, for Bergner to produce any factual support for the allegation that the jury was prejudiced by the numbers-only selection process.

### *A. Standard of appellate review*

"A claim of ineffective assistance of counsel is a mixed question of fact and law. [internal citation omitted] We review

the circuit court's findings of fact under a clearly erroneous standard, but independently determine the legal question of whether counsel's assistance was ineffective. [internal citation omitted] We review constitutional questions, both state and federal, *de novo*." [internal citation omitted]" *State v. Lepsch,* 2017 WI 27, P13-P14, 374 Wis. 2d 98, 109-110, 892 N.W.2d 682, 688.

The question of whether the circuit court empaneled a numbers-only jury is, essentially, a question of law. The determination is made by reviewing the transcript of the jury selection. There can be no disputed issue of fact on this point.

### *B. Ineffective assistance of counsel generally*

The standard for ineffective assistance of counsel is well-known.

> "[T]he right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson,* 397 U.S. 759, 771 n. 14, 90 S.Ct. 1441, 1449 n. 14, 25 L.Ed.2d 763 (1970). The benchmark for judging whether counsel has acted ineffectively is stated in *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). That requires the ultimate determination of "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686, 104 S.Ct. at 2064. The overall purpose of this inquiry is to ensure that the criminal defendant receives a fair trial. A fair trial is defined as "one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the

> proceeding." *Id.* at 685, 104 S.Ct. at 2063.
>
> The *Strickland* Court set forth a two-part test for determining whether counsel's actions constitute ineffective assistance. The first test requires the defendant to show that his counsel's performance was deficient. "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687, 104 S.Ct. at 2064. Review of counsel's performance gives great deference to the attorney and every effort is made to avoid determinations of ineffectiveness based on hindsight. Rather, the case is reviewed from counsel's perspective at the time of trial, and the burden is placed on the defendant to overcome a strong presumption that counsel acted reasonably within professional norms.[4] *Id.*

*State v. Johnson*, 153 Wis. 2d 121, 126-27, 449 N.W.2d 845, 847-48 (1990)

Concerning the "prejudice prong", the Supreme Court has explained, "The prejudice inquiry asks whether '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." *State v. Romero-Georgana*, 2014 WI 83, ¶ 41, 360 Wis. 2d 522, 544, 849 N.W.2d 668, 678 In May, 2018, the Supreme Court reiterated the test. The court wrote, "A deficiency is prejudicial if there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine

confidence in the [proceedings'] outcome." *State v. Sanders*, 2018 WI 51, ¶ 30, 381 Wis. 2d 522, 538, 912 N.W.2d 16, 25

If defense counsel's performance was deficient for failing to object to empanelling a numbers-only jury, then the court must determine whether the error is prejudicial.

Here, though, the circuit court denied Bergner's motion without conducting an evidentiary hearing. The standard of appellate review of an order denying a postconviction motion without conducting a hearing was set forth in *State v. Allen,* 2004 WI 106, P9, 274 Wis. 2d 568, 682 N.W.2d 433, as follows:

> Whether a defendant's postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested is a mixed standard of review. First, we determine whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief. This is a question of law that we review de novo. [ *State v.] Bentley,* 201 Wis. 2d 309-10, 548 N.W.2d 50. [ 682 N.W.2d 433 (1996)] If the motion raises such facts, the circuit court must hold an evidentiary hearing. Id. at 310; *Nelson v. State*, 54 Wis. 2d 489, 497, 195 N.W.2d 629 (1972). However, if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing. *Bentley*, 201 Wis. 2d at 310-11; *Nelson*, 54 Wis. 2d at 497-98. We require the circuit court "to form its independent judgment after a review of the record and pleadings and to support its decision by written opinion." *Nelson,* 54 Wis. 2d at 498. S*ee Bentley*, 201 Wis. 2d at 318-19 (quoting the same). We review a circuit court's discretionary decisions under the deferential erroneous exercise of discretion standard. *In re the Commitment of Franklin*, 2004 WI 38, P6, 270 Wis. 2d 271, 677 N.W.2d 276;

Bentley, 201 Wis. 2d at 311.

*See, also, State v. Love*, 2005 WI 116, P27 (Wis. 2005).

***C. Empaneling a "numbers-only" jury***

It is well-established that a court may not empanel an anonymous jury without making specific findings that it is necessary to protect the jury, and that steps are being taken to assure that the defendant will receive a fair trial. *State v. Tucker*, 2003 WI 12, ¶15, 259 Wis. 2d 484, 657 N.W.2d 374.

This principle has been extended to "numbers only" juries. Where, as here, the identities of the jurors is on a jury list in the court file, it is not technically speaking an anonymous jury. However, the courts have been concerned with the *effect* it *has on the jurors in the courtroom* when they are permitted to keep their identities secret. As observed by the Supreme Judicial Court of Massachusetts, "the empanelment of an anonymous jury triggers due process scrutiny because this practice is likely to taint the jurors' opinion of the defendant, thereby burdening the presumption of innocence." *Tucker*, 2003 WI 12, P18, 259 Wis. 2d 484, 497, 657 N.W.2d 374, 380, 2003 Wisc. LEXIS 12, *14

Thus, the supreme court has held that, "[I]n accordance with the standard articulated in *Britt*, if a circuit court restricts any juror information, the court must make an individualized determination that the jury needs protection and take

reasonable precautions to minimize any prejudicial effect to the defendant." *Tucker*, 259 Wis. 2d at 489-490, 657 N.W.2d at 377. In *Tucker*, like here, the names of the jurors were contained on a jury list that was part of the court file.

The *Tucker* court further explained that, "[B]efore a circuit court restricts any juror information in an individual case, it should determine that the jurors are in need of protection and take reasonable precautions to avoid prejudice to the defendant. In this case, Tucker concedes that her opportunity for voir dire was not impeded since both parties had access to all the juror information" *Tucker*, 2003 WI 12, P17, 259 Wis. 2d 484, 496-497, 657 N.W.2d 374, 380, 2003 Wisc. LEXIS 12, *13-14

### *D. This was a numbers-only selection process; and, therefore, counsel's performance was deficient for failing to object.*

Counsel's performance is not deficient if he fails to object to something that is not objectionable. *See State v. Toliver*, 187 Wis. 2d 346, 360, 523 N.W.2d 113 (Ct. App. 1994), Here, the circuit court suggested that counsel's performance was not deficient because numbers-only selection procedures are widely used, and are for the convenience and comfort of the jury panel.

Really, though, there can be no coherent argument that

counsel's failure to object was not deficient. The judge specifically told the parties and the jury panel, "And then I should say, when I ask you all questions, if your answer to my question is yes, just raise your hand and keep your hand in the air and I'll call on you and ask you for your juror number. Okay? *You don't need to use your --your -- your first or last name or any of your names here in court today. You can just go by your juror number to give you a little -- a little bit of privacy. Okay?*" [emphasis provided; R:88-23, 24] Thereafter, a numbers only-procedure was followed during jury selection.

In its memorandum decision denying Bergner's postconviction motion, the circuit court suggested that defense counsel's failure to object to the numbers only procedure was not deficient performance because, "Referring to jurors by their juror numbers during voir dire is a relatively common practice, often adopted without objection, for the convenience of the parties, to avoid mispronouncing names, and for juror comfort." [R:94-3]

This, however, is not what the Wisconsin Supreme Court mandated in *Tucker*. Rather, the supreme court was unambiguous when it held that, "[B]efore a circuit court restricts *any juror information* in an individual case, it should determine that the jurors are in need of protection and take reasonable precautions to avoid prejudice to the defendant." (emphasis provided) *Tucker*, 2003 WI 12, P17, 259 Wis. 2d 484, 496-497,

657 N.W.2d 374, 380, 2003 Wisc. LEXIS 12, *13-14 To emphasize the supreme court's holding: the circuit court may not restrict *any* juror information without making the proper findings.

It goes wholly without saying, then, that a circuit court is not free to restrict juror information whenever it feels like it because "everyone is doing it", and because it is comfortable and convenient for the jury panel members.

Indisputably, then, defense counsel's failure to object to the numbers-only procedure was deficient performance.

### *E. Counsel's deficient performance in failing to object to the numbers only selection process was prejudicial.*

Here, the question is whether counsel's failure to object to the improper use of the numbers-only procedure during jury selection was prejudicial. In other words, if the jurors' names, rather than only their numbers, had been used during the jury selection process, is there a reasonable probability of a different result?

Once again, the starting point is the words of the Wisconsin Supreme Court in *Tucker*. The court explained, "Serious concerns regarding a defendant's presumption of innocence are raised when juror information is restricted, as in this case. As observed by the Supreme Judicial Court of Massachusetts, 'the empanelment of an anonymous jury

triggers due process scrutiny because this practice is likely to taint the jurors' opinion of the defendant, thereby burdening the presumption of innocence.'" *Tucker*, 2003 WI 12, P18, 259 Wis. 2d at 497, 657 N.W.2d at 380

In Bergner's case, the circuit court asserted that, "The defendant's claim of prejudice is nothing more than speculation. Again, the defendant has provided no support for a finding that the jury would interpret the court procedure as implying dangerousness on his part given the context of the trial. Moreover, the defendant has not engaged in a meaningful discussion of the evidence against him or established that the jury procedure would have been reasonably likely to alter the trial's outcome –" [R:94-3].

The circuit court continued, "The defendant's claims that the jury procedure would have sent the message that he was dangerous or that that message would have been reasonably probable to alter the outcome of an OWI trial are speculative, conclusory, and insufficient to demonstrate prejudice due to counsel's failure to object to the procedure." [R:94-4]

As with the prejudice prong, on the prejudice prong the circuit court seems to pretend that teachings of the Wisconsin Supreme Court are merely *suggestions* to be applied by the lower courts when convenient. But the supreme court's instructions in *Tucker* are mandatory and unambiguous: the empanelment of an anonymous jury triggers due process

scrutiny because this practice is likely to taint the jurors' opinion of the defendant, thereby burdening the presumption of innocence.

So it is not Nicolas Bergman who "speculates" that the numbers-only procedure prejudiced him. Rather, it is the Wisconsin Supreme Court which has held, as a matter of law, that this is the case. There is nothing in *Tucker* to suggest that a numbers-only procedure may be freely used because this is only an "OWI" case.

Further, concerning the prejudice prong, the circuit court wrote, "[T]he defendant has provided no *support* for a finding that the jury would interpret the court procedure as implying dangerousness on his part given the context of the trial." (emphasis provided) [R:94-3] What kind of factual "support" does the circuit court expect Bergner to provide?

Does the circuit court mean to suggest that Bergner was required to "support" his claim by filing affidavits signed by each of the jurors to the effect that they thought the use of a numbers-only procedure was because Bergner was dangerous? How else could a defendant provide factual "support" for the proposition that the use of a numbers-only procedure is prejudicial?

The problem, of course, is that, "Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the

jury's deliberations or to the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith . . . " § 906.06(3), Stats

So the circuit court was critical of Bergner for failing to provide factual "support" for his prejudice claim that, by law, cannot be provided.

Prejudice is obvious in the record. The evidence against Bergner was far from overwhelming. In fact, the jury found Bergner not guilty of count one, operating under the influence of an intoxicant; but guilty of count two, operating with a prohibited alcohol concentration. Each side called an expert concerning the accuracy of the Intoximeter machine used to test Bergner's breath. Had the jury not been sent the message that Bergner is a dangerous person from whom the jury needs protection, there is a reasonable probability that the jury would have acquitted him on both counts. Recall that the use of a "numbers only" jury impinges upon the defendant's presumption of innocence. Thus, it is likely that the jury found Bergner guilty of the PAC charge because they believed that his expert had not "proved" that the Intoximeter was not operating properly. But Bergner has no burden of proof. Rather, he need only establish a "reasonable doubt" as to whether the machine was operating properly.

Counsel's failure to object to the numbers only procedure, then, was prejudicial.

## Conclusion

For these reasons, it is respectfully requested that the court reverse the order of the circuit court denying Bergner's postconviction motion. The matter should be remanded to the circuit court with orders to conduct an evidentiary hearing into whether defense counsel had a legitimate reason for failing to object to the numbers-only jury selection procedure.

Dated at Milwaukee, Wisconsin, this 26th day of December, 2024.

Law Offices of Jeffrey W. Jensen
Attorneys for Appellant
*Electronically signed by:*
Jeffrey W. Jensen
State Bar No. 01012529

161 S. First Street
Suite 200
Milwaukee, WI 53204

414-224-9484
jensen@milwaukeecriminaldefense.pro

# Certification as to Length and E-Filing

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 5096 words.

Dated at Milwaukee, Wisconsin, this 26th day of December, 2024.

Law Offices of Jeffrey W. Jensen
Attorneys for Appellant
*Electronically signed by:*
Jeffrey W. Jensen
State Bar No. 01012529

161 S. First Street
Suite 200
Milwaukee, WI 53204

414-224-9484
jensen@milwaukeecriminaldefense.pro