

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 16, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2011AP1496**

**Cir. Ct. No. 2005CF1876**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JONATHON T. ADEYANJU,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County:  
PATRICK J. FIEDLER, Judge. *Affirmed.*

Before Sherman, Kloppenburg and Neubauer, JJ.

¶1 PER CURIAM. Jonathon Adeyanju appeals an order denying his postconviction motion filed under WIS. STAT. § 974.06 (2013-14).<sup>1</sup> We affirm.

¶2 The State alleged that Adeyanju was one of a number of people who jumped from three vehicles in the street, fired a hail of bullets up a driveway towards a group of people near a garage, and then quickly fled. At trial, the State presented several witnesses who claimed to have been among the shooters, and who testified as to the involvement of Adeyanju and three other co-defendants tried at the same time. The jury found the defendants guilty on three counts each of attempted first-degree intentional homicide while armed, and three counts each of endangering safety by use of a firearm, under WIS. STAT. § 941.20(2)(a) (2007-08).

¶3 Adeyanju filed a postconviction motion under WIS. STAT. § 974.06 that raised several claims. The circuit court denied the motion without an evidentiary hearing.

¶4 Adeyanju argues that the circuit court erred when reading the jury instruction for the second and third counts, which were two of the attempted homicide counts. Each time, the court stated: “To this charge, each of the defendants before you has entered a plea of *guilty*, which means the State must prove every element of the offense charged beyond a reasonable doubt.” (Emphasis added.) Adeyanju argues that this caused him prejudice by leading the jury to believe that he had already pled guilty.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶5 We conclude that Adeyanju was not prejudiced by this error. We believe that most jurors would understand this was an error by the court. The remainder of the instructions made it clear that it was the jury's task to determine the defendants' guilt on all counts that were the subject of the trial.

¶6 Next, Adeyanju argues that his trial counsel was ineffective in relation to numerous references to gang affiliations that were made during the trial. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We need not address both components of the analysis if the defendant makes an inadequate showing on one. *Id.* at 697. 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. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.* Because no evidentiary hearing was held, the issue before us is whether Adeyanju alleged facts which, if true, would entitle him to relief. *State v. Bentley*, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996).

¶7 Adeyanju argues that counsel was ineffective by not objecting to these gang references as violations of the circuit court's pretrial order regarding such references. We reject this argument for two reasons. First, the gang references elicited by Adeyanju's trial counsel, or other defense counsel, cannot be in violation of the pretrial order because that order controlled only the use of such evidence by the State. Second, as to the gang references elicited by the State, these were relatively few in number. In the context of this lengthy trial, they were too few in number to undermine our confidence in the outcome.

¶8 Next, Adeyanju argues that the circuit court's pretrial order allowing gang references for certain purposes was in error because the probative value of the evidence was outweighed by unfair prejudice. *See* WIS. STAT. § 904.03. This argument fails because challenges to discretionary evidentiary rulings cannot be made in motions under WIS. STAT. § 974.06. *State v. Evans*, 2004 WI 84, ¶33, 273 Wis. 2d 192, 682 N.W.2d 784, *abrogated on other grounds by State ex rel. Coleman v. McCaughtry*, 2006 WI 49, 290 Wis. 2d 352, 714 N.W.2d 900.

¶9 Next, Adeyanju argues that we should reverse under WIS. STAT. § 752.35 on the ground that the real controversy was not fully tried, due to the court's error in the instruction saying that Adeyanju pled guilty and the admission of the gang references. We conclude that the real controversy was fully tried. In addition, we ordered supplemental briefing on whether we should reverse under § 752.35 on the ground that justice miscarried. We decline to exercise our discretion to reverse on that ground.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

