COURT OF APPEALS
DECISION
DATED AND FILED

October 23, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP1616-CR **Cir. Ct. No. 2004CF6478**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT HOWARD BAUMBACH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEAN W. DiMOTTO, Judge. *Affirmed*.

Before Curley, P.J., Fine and Kessler, JJ.

¶1 FINE, J. Robert Howard Baumbach, *pro se*, appeals a judgment entered after a jury found him guilty of first-degree sexual assault of a child. *See*

WIS. STAT. § 948.02(1) (2003–04).[1] Baumbach claims that: (1) he did not knowingly, intelligently, and voluntarily waive his right to a preliminary examination; (2) the complaint and information were insufficient; and (3) his trial lawyer was ineffective. We affirm.

I.

¶2 In November of 2004, Baumbach was charged with sexually assaulting his then nine-year-old daughter, L.B. Baumbach waived his right to a preliminary examination and the trial court bound him over for trial. L.B. testified at the trial. As we have seen, the jury found Baumbach guilty. Baumbach did not file any postconviction motions, but, rather, filed this appeal.

II.

¶3 Baumbach claims that he did not knowingly, intelligently, and voluntarily waive his right to a preliminary examination. "[A] conviction resulting from a fair and errorless trial in effect cures any error at the preliminary hearing." ***State v. Webb***, 160 Wis. 2d 622, 628, 467 N.W.2d 108, 110 (1991). "Accordingly, a defendant who claims error occurred at his preliminary hearing may only obtain relief before trial." ***Ibid.*** Baumbach did not raise this claim before his trial. Accordingly, he is barred from raising it on appeal.

¶4 Next, Baumbach argues that the trial court lacked jurisdiction because the complaint and information did not allege that the crime happened in

[1] WISCONSIN STAT. § 948.02(1) was amended effective June 6, 2006. *See* 2005 Wis. Act 430, §§ 3, 4; 2005 Wis. Act 437, §§ 1, 7. The changes are not material to this appeal.

the State of Wisconsin. This is contradicted by the Record. Baumbach's complaint charges that:

> The above named complaining witness being duly sworn says that [Baumbach] in the County of Milwaukee, *State of Wisconsin*.
>
> ….
>
> Between November 1, 2004, and November 8, 2004, at 3043 South 15th Place, City of Milwaukee, did have sexual contact with L[.] B. (dob 12/26/94), born, a person who had not attained the age of 13 years, contrary to Wisconsin Statutes Section 948.02(1).

(Bolding and some uppercasing omitted; emphasis added.) Baumbach's information charges that:

> I, E. Michael McCann, District Attorney for Milwaukee County, Wisconsin, hereby inform the Court that [Baumbach] in the County of Milwaukee, *State of Wisconsin*.
>
> ….
>
> Between November 1, 2004, and November 8, 2004, at 3043 South 15th Place, City of Milwaukee, did have sexual contact with L[.] B. (dob 12/26/94), born, a person who had not attained the age of 13 years, contrary to Wisconsin Statutes Section 948.02(1).

(Bolding and some uppercasing omitted; emphasis added.)

¶5 Baumbach also contends that the address in the complaint and information, 3043 South 15th Place, was different from the address that L.B. gave at trial, 7843 South 15th Place. Baumbach has not alleged, let alone shown, prejudice. *See* WIS. STAT. § 971.26 ("No indictment, information, complaint or warrant shall be invalid, nor shall the trial, judgment or other proceedings be affected by reason of any defect or imperfection in matters of form which do not prejudice the defendant."). The complaint and information gave Baumbach notice

of the essential facts and the statutory violations being charged. Baumbach does not allege that the address where the assault happened was material, or that the different address rendered him unable to plead and prepare a defense. *See* ***State v. Hoffman***, 106 Wis. 2d 185, 199, 316 N.W.2d 143, 152 (Ct. App. 1982) ("The exact location of the offense need not be alleged if it is not a material element of the offense."); ***State v. Copening***, 103 Wis. 2d 564, 573, 309 N.W.2d 850, 854–855 (Ct. App. 1981) (charging document gives adequate notice when, among other things, defendant is able to plead and prepare a defense).[2]

¶6 Baumbach also contends that his trial lawyer was constitutionally ineffective. A defendant claiming ineffective assistance of counsel must establish that: (1) the lawyer was deficient; and (2) the defendant suffered prejudice as a result. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To satisfy the prejudice aspect of ***Strickland***, the defendant must demonstrate that the lawyer's errors were sufficiently serious to deprive him or her of a fair trial and a reliable outcome, ***ibid.***, and "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.***, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Ibid.*** We need not address both aspects if the defendant fails to make a sufficient showing on either one. ***Id.***, 466 U.S. at 697.

[2] Baumbach also claims that the prosecutor was vindictive. He does not, however, in his main or reply briefs on appeal provide any facts, set forth the relevant legal standard, or develop an argument. Accordingly, we decline to address this issue. *See* ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16, 20 (1992) (*pro se* litigants are generally held to the same rules that apply to lawyers on appeal); ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992) (appellate court can "decline to review issues inadequately briefed").

¶7 First, Baumbauch contends that his trial lawyer should have filed a motion to suppress L.B.'s videotaped statement. L.B.'s videotaped statement was not, however, used at Baumbach's trial. Accordingly, the suppression of L.B.'s statement would not have changed the trial's outcome.

¶8 Second, Baumbach argues that his due-process rights were violated when his trial lawyer waived Baumbach's right to be present at a final pretrial hearing. We disagree.

¶9 The right to be present at trial "includes the right to be present at proceedings before trial at which important steps in a criminal prosecution are often taken." ***Leroux v. State***, 58 Wis. 2d 671, 689, 207 N.W.2d 589, 599 (1973). A defendant need not be present, however, when a pretrial hearing deals solely with a question of law or preliminary matters of procedure. *See* ***Ramer v. State***, 40 Wis. 2d 79, 84–85, 161 N.W.2d 209, 211 (1968); *see also* ***Leroux***, 58 Wis. 2d at 690, 207 N.W.2d at 600 (defendant's presence required when it would bear "'a reasonably substantial relationship to the opportunity to defend'") (quoted source omitted).

¶10 The pretrial hearing concerned only preliminary matters. The State gave notice of its intent to offer L.B.'s videotaped statement. The admissibility of the statement was not argued or decided and, as we have seen, it was not used at trial. Baumbach's lawyer also requested a reduction in Baumbach's bail, and the parties discussed Baumbach's statement to the police, which the State said it did not intend to use at trial. Baumbach's absence did not affect his opportunity to defend. Accordingly, Baumbach's due-process rights were not violated.

¶11 Third, Baumbach contends that his trial lawyer was ineffective because the lawyer "made absolutely no attempt whatsoever to object to anything

during trial." Baumbach claims that the prosecutor asked L.B. leading questions, and, had his lawyer objected, "a different outcome would have been reached." This claim is conclusory and undeveloped. Baumbach does not specify which questions his lawyer should have objected to, or how an objection, if sustained, would have changed the outcome of his trial. Accordingly, we decline to address this issue. *See* ***Barakat v. Department of Health & Soc. Servs.***, 191 Wis. 2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (we will not review arguments that are "amorphous and insufficiently developed").

¶12 Finally, Baumbach argues that he was prejudiced by the "cumulative errors and ineffective assistance of counsel." As we have seen, however, Baumbach's claims are insufficiently briefed or fail on the merits. That ends our inquiry. *See* ***State v. Thiel***, 2003 WI 111, ¶61, 264 Wis. 2d 571, 606, 665 N.W.2d 305, 322–323 ("each act or omission must fall below an objective standard of reasonableness … in order to be included in the calculus for prejudice").

By the Court.—Judgment affirmed.

Publication in the official reports is not recommended.