COURT OF APPEALS
DECISION
DATED AND FILED

March 18, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP1958-CR **Cir. Ct. No. 2003CF6505**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ADONIS R. GRADY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed*.

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

¶1 CURLEY, P.J. Adonis R. Grady appeals the judgment convicting him of felony murder, contrary to WIS. STAT. § 940.03 (2001-02),[1] and the order

[1] As amended effective February 1, 2003, by 2001 Wis. Act 109. All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

denying his postconviction motion. Grady contends that: (1) both of his trial attorneys were ineffective and he was entitled to a ***Machner*** hearing[2] concerning his allegations; (2) the trial court erroneously exercised its discretion in limiting cross-examination concerning the conditions under which Grady and Ryan Davis, one of Grady's accomplices, gave their statements to police and in refusing to permit the introduction of evidence of Grady's rejection of an offer of immunity; (3) newly discovered evidence requires a new trial; and (4) a new trial should be granted in the interest of justice. We disagree and affirm.

I. BACKGROUND.

¶2 A petition dated July 9, 2003, was filed in Children's Court alleging that Grady was delinquent for, *inter alia*, his part in the robbery of Joseph Peter that resulted in the shooting death of Peter. Grady was, at the time, several weeks shy of his sixteenth birthday. Several months later, Grady was waived into adult court and charged with felony murder.

¶3 The underlying facts are that on July 1, 2003, Grady, along with two others, Davis, and a man known only as "Reese," decided to rob the drug dealer who Grady had purchased marijuana from earlier in the evening. The plan was for Grady to remain in the van while the other two, armed with a gun supplied by Grady, went in and took money that Grady had seen on a table in the drug dealer's house. Grady pointed out the apartment where the drug dealer lived from about a block away. The other two men walked up to what they believed was the drug dealer's house and rang the doorbell. It was later learned that this was the wrong

[2] ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

apartment. Shortly after the doorbell had been rung, Barbara Davison, Peter's girlfriend, opened the door to leave for work and encountered Davis and Reese. The two men pushed her back into the apartment and ordered her to the ground. Davis went to look for money in the dark apartment, while Reese, who had the gun, remained at the door where Davison was being held on the floor. According to Davis's testimony at Grady's trial, Davis heard footsteps and then he heard, but did not see, shots being exchanged. Davison testified that when Peter came down the stairs with a shotgun, shots were fired. Thereafter, Davis and Reese ran out of the house, got into the van that Grady was driving, and fled the scene. When the police arrived, Peter was already dead. Grady was identified by a neighbor who recognized him by a scar on his face as someone who sold CDs out of a van.

¶4 After Grady was arrested and advised of his ***Miranda*** rights,[3] he gave two statements to the police. Grady was told during one of the interrogations that, contrary to what he claimed, his mother did not support his alibi that he was home in the basement in bed on the night of the murder. In one of his later statements, he admitted driving Davis and another man to Peter's apartment, but claimed not to know what the two of them were going to do.

¶5 His attorney filed a motion to suppress his statements given to the police. His attorney also filed a notice of alibi, stating that Grady's mother and another would say he was elsewhere at the time of the murder. Shortly before trial, Grady changed lawyers. His new lawyer informed the court that he planned on calling Grady's grandfather to testify that Grady had been offered immunity in exchange for testifying against his co-actors, and that Grady told his grandfather

[3] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

that he could not accept the proposal because he was not involved in the robbery/murder. The trial court ruled this testimony inadmissible.

¶6 At Grady's jury trial, Davis testified to Grady's participation in the armed robbery. During the trial, Grady's attorney unsuccessfully attempted to explore at great length the police practices undertaken during the interrogation of both Grady and Davis. Grady was convicted and sentenced to fifteen years of confinement and thirteen years of extended supervision. He filed a postconviction motion which was denied without a hearing. This appeal follows.

II. ANALYSIS.

A. Neither of Grady's attorneys were ineffective.

¶7 Grady claims that both his trial attorneys were ineffective. He submits that his first attorney, Michael Backes, was ineffective in litigating the motion to suppress his statements given to police, for failing to investigate, and for failing to file a discovery demand. He faults both Attorney Backes and his second attorney, John Schiro, for failing to move to suppress the statement of Davis. Grady also claims that Attorney Schiro failed to investigate and was ineffective for various deficiencies at trial. Grady contends he was entitled to a ***Machner*** hearing on his allegations. We disagree with all of his contentions.

¶8 To demonstrate ineffective assistance, the defendant must show that counsel's performance was deficient, and that this deficient performance prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To establish deficient performance, the defendant must show that counsel's representation was below objective standards of reasonableness. *See* ***State v. McMahon***, 186 Wis. 2d 68, 80, 519 N.W.2d 621 (Ct. App. 1994). Deficient

performance means "'that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed … by the Sixth Amendment.'" ***State v. Johnson***, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990) (quoting ***Strickland***, 466 U.S. at 687). In determining whether there was deficient performance, we make every effort to avoid relying on hindsight. ***Id.*** We focus on "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." ***Id.*** "An attorney's performance is not deficient unless it is shown that, 'in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.'" ***State v. Guck***, 170 Wis. 2d 661, 669, 490 N.W.2d 34 (Ct. App. 1992) (citation omitted).

¶9 To establish prejudice, the defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Strickland***, 466 U.S. at 694. Prejudice must be "'*affirmatively* prove[n].'" ***State v. Wirts***, 176 Wis. 2d 174, 187, 500 N.W.2d 317 (Ct. App. 1993) (citation omitted; emphasis in ***Wirts***). The necessity to prove both deficient performance and prejudice obviates the need to review proof of one, if there is insufficient proof of the other. *See* ***State v. Moats***, 156 Wis. 2d 74, 101, 457 N.W.2d 299 (1990).

¶10 With respect to Grady's claim that he was entitled to a ***Machner*** hearing on his claims, we review an order of the trial court denying a request for an evidentiary hearing using a two-part test. ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996).

> If the motion on its face alleges facts which would entitle the defendant to relief, the [trial] court has no discretion and must hold an evidentiary hearing. Whether a motion

> alleges facts which, if true, would entitle a defendant to relief is a question of law that we review de novo.

Id. (citations omitted). If the motion does not allege sufficient facts, however, "the [trial] court has the discretion to deny a postconviction motion without a hearing based on any one of the three factors enumerated in ***Nelson*** [***v. State***, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972)]." ***Bentley***, 201 Wis. 2d at 310-11. Under the ***Nelson*** factors, a trial court may refuse to hold an evidentiary hearing if a "'defendant fails to allege sufficient facts in his [or her] motion…, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief.'" ***Bentley***, 201 Wis. 2d at 309-10 (citations omitted). We review the trial court's determination for an erroneous exercise of discretion. ***Id.*** at 311.

¶11 Grady's first claim is that Attorney Backes was ineffective in litigating the motion to suppress his statements given to police because his attorney failed to present expert witnesses who could have testified to his low intellectual levels and his emotional and learning deficits. Grady also faults his attorney for failing to call Grady as a witness at the pretrial hearing. Grady submitted numerous documents and reports with his postconviction motion. Included were psychological reports suggesting that Grady was mildly mentally retarded and had emotional and learning disabilities. He also presented an affidavit from his mother indicating that she supported Grady's contention that he was at home the morning of the murder, and thus, the police lied to him. Grady insists that his statements were coerced by the police. He contends that the combination of his low IQ, his psychological problems, his learning disabilities, his youth, and improper police tactics, like lying about his mother's statements,

rendered his statement involuntary and his attorney's failure to introduce this evidence constituted ineffective assistance of counsel.

¶12 "Whether or not a confession is voluntary and not the result of coercion depends upon the 'totality of the circumstances.' The test is whether 'the totality of the circumstances that preceded the confession[] … goes beyond the allowable limits.'" ***State v. Wallace***, 59 Wis. 2d 66, 81, 207 N.W.2d 855 (1973) (citation omitted; ellipses in ***Wallace***).

¶13 Case law has held that low intellectual levels and learning disabilities do not automatically require a finding of involuntariness. *See* ***Norwood v. State***, 74 Wis. 2d 343, 366, 246 N.W.2d 801 (1976); ***State v. Cumber***, 130 Wis. 2d 327, 331-32, 387 N.W.2d 291 (Ct. App. 1986). In light of the circumstances surrounding Grady's interrogation, and the trial court's observations regarding the credibility of the witnesses, we determine that the trial court properly determined that Grady's statements to police were voluntary. The trial court was aware of Grady's limitations. In its postconviction motion decision, the trial court wrote:

> The Court's findings of fact and mixed findings of fact and conclusions of law at the February 20, 2004 [***Miranda-Goodchild*** hearing][4] took into account the defendant's personal characteristics. The Court was aware that the defendant was 15 years of age at the time of the interview. The interviewing detective determined that the defendant was not undergoing any psychological or psychiatric care. While the defendant did not say that he had a mental health history, he did say he had emotional and learning disabilities, and the Court was aware of this. The second interviewing detective also became aware of

[4] ***Miranda***, 384 U.S. 436; ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

> these educational difficulties or learning disabilities through the defendant. While the Court was aware that the defendant suffered from emotional and learning disability issues, the interviewing detective followed up on these issues, and there were no facts found at the ***Miranda-Goodchild*** hearing that these issues affected the manner in which the defendant gave his statements to the detectives. Further, the defendant had been arrested previously, and had experience with law enforcement officers.
>
> The defendant's argument therefore is one of degree: the emotional and learning difficulties were brought out in the interviews, testified to at the evidentiary hearing, and considered by the Court in its voluntariness determination, but just not in the dispositive way the defendant now seeks.

(Record citations and underlining omitted; footnote added.) We agree with the trial court. Grady's attorney was not ineffective for failing to call expert witnesses to testify to facts already known to both the police and the court. Moreover, while Grady's mother recanted her earlier statement to police that she could not say when Grady came home, a police report of an interview with her supports the fact that earlier Grady's mother could not substantiate Grady's contention that he was home. Thus, the police were not deceitful, as Grady claims.

¶14 Grady also faults Attorney Backes for failing to call him as a witness because he would have testified that during his interrogation his request to call his mother was denied, and he was told he could go home if he gave a statement to the police. His attorney explained in his affidavit that he did not call Grady as a witness because he feared Grady would not win any credibility contests with the police, and he could have been impeached later by whatever testimony he gave at the hearing. There is "'a strong presumption that counsel's conduct falls within the wide range of reasonable professional [legal] assistance,'" which could be considered sound trial strategy. ***State v. Ambuehl***, 145 Wis. 2d 343, 351, 425 N.W.2d 649 (Ct. App. 1988) (quoting ***Strickland***, 466 U.S. at 689). Such tactical

decisions regarding trial strategy are entrusted to the attorney. ***State v. Gordon***, 2003 WI 69, ¶21, 262 Wis. 2d 380, 663 N.W.2d 765. Attorney Backes's decision not to call Grady as a witness was a reasonable strategic decision, and thus, does not constitute deficient performance.

¶15 Grady also complains that Attorney Backes's failure to file a formal discovery request with the State, failure to review the court file of Davis, and failure to call an expert witness concerning false confessions, constituted ineffectiveness. Case law supports Grady's claim that a failure to review all discovery in a felony case is deficient performance. *See* ***State v. Thiel***, 2003 WI 111, ¶37, 264 Wis. 2d 571, 665 N.W.2d 305. However, here Attorney Backes did review the State's file, only informally. In addition, Grady has not told us what his attorney would have seen that he did not see had he filed a formal discovery motion. As to his contention that Attorney Backes should have reviewed the court file of Davis, perhaps if Attorney Backes had continued on the case he may have done so, but he was relieved of his obligations to Grady before trial. Attorney Backes cannot be faulted for this omission when he was not the trial attorney. As to the expert witness issue, the trial court later ruled that much of the testimony of an expert witness proffered by Attorney Schiro on the issue of confessions, as it related to the voluntariness of Grady's confession, would not have been allowed. This ruling was not appealed. Consequently, Attorney Backes's failure to procure a witness to discuss confessions was neither deficient performance nor did it result in prejudice because such a witness would have been severely limited in the scope of his/her testimony.

¶16 Grady also criticizes Attorney Schiro, who did review Davis's court file, for not finding Davis's medical records or an exculpatory letter written by Davis.[5] Assuming that Grady's assertion is true that Attorney Schiro failed to discover these two documents, Grady does not explain how these two documents would have impacted the trial. The fact that Davis had a cast on his hand at the time of the murder was well known to everyone. The medical reports do not contradict Davis's testimony of the events surrounding the murder, except that when he was attempting to recall what he did the day before the murder, he failed to remember that he had a cast put on that day. This fact is hardly grounds for a new trial. There is no dispute that he did have a cast at the time of the murder. As to Davis's letter, it was barely legible and is devoted primarily to quoting the Bible. It was also unsigned. The letter offers little information about the events. It merely states: "Judge, [I]'m not a bad person [I] wouldn't Do this. Your honor please su[p]press that statement please I wasn't involved I didn't write that statement or tell him I was there." The letter, if indeed written by Davis, appears to want to suppress Davis's statement given to the police. That letter is not crucial, however, since the State never introduced Davis's statement at Grady's trial. Moreover, Davis testified and was subjected to vigorous cross-examination, including being questioned on his initial denial of being involved. The failure to find these two documents in Davis's court file—assuming they were in the file when Attorney Schiro reviewed it—caused no prejudice to Grady.

¶17 Grady also argues that both Attorneys Backes and Schiro were ineffective for failing to suppress Davis's confession and his testimony. As noted,

[5] The State points out that there is no affidavit from Attorney Schiro confirming that he overlooked the letter and the medical reports.

the State did not introduce Davis's confession, so the failure to seek its suppression is not deficient performance. Further, there is no support for Grady's contention that the attorneys' failure to move to suppress Davis's testimony would have been successful. The only case cited by Grady is ***State v. Samuel***, 2002 WI 34, 252 Wis. 2d 26, 643 N.W.2d 423, and it does not support Grady's theory. In ***Samuel***, an attempt was made to suppress a witness's confession, not a witness's trial testimony. ***Id.***, ¶2. Given the lack of case law on this issue, neither attorney can be faulted for failing to attempt to suppress Davis's trial testimony.

¶18 Finally, Grady submits that Attorney Schiro was ineffective because he failed to impeach Davis concerning the location of the house of Jason Haman, a friend of Davis's, and because he never had a Polaroid picture of Davis with a black cast admitted into evidence. Davis testified at trial that after the murder was committed he went to Haman's house. However, another friend, Justin Baetje, claimed that in the evening on the day of the murder he spoke to Davis and Davis told him he did not know where Haman lived. While both statements can be true, that is, that Davis did not know the exact address of Haman's house and consequently told Baetje he did not know where Haman lived, even if the statements conflict, they are of little impeachment value given the exhaustive cross-examination of Davis. Clearly, this fact does not undermine confidence in the outcome of the case.

¶19 With respect to Grady's contention that Attorney Schiro engaged in deficient performance for not admitting a picture of Davis showing his black cast, we again disagree. Grady maintains that the fact that Davis had a black cast differs from the accounts of several of the witnesses that never mentioned a black cast and calls into question the truthfulness of Davis's testimony at trial. Davis

claimed not to have a weapon, although the eyewitness who identified Grady said that the two men who fled the apartment both had guns.

¶20 First, discrepancies between witnesses' observations are normal. Second, Davis's cast was discussed at trial. As the trial court observed: "While the extra evidence of the picture may have helped the defendant, it also may not have. Again, this is a request that goes to the degree rather than the substance of the evidence elicited. Trial counsel's performance was not deficient because the issue was the subject of cross-examination." We agree. The failure to admit a photograph showing Davis's cast was not deficient performance.

¶21 Finally, given our conclusions regarding the alleged ineffectiveness of both lawyers, we adopt the trial court's belief that a ***Machner*** hearing was not warranted.

> While the defendant's motion combs through the evidence and arguments and points out strategic choices with which the defendant now disagrees, and offers arguments he now wishes would have been made, this exercise is done with the great benefit of hindsight. This is not the lens through which to view the defendant's former attorneys' advocacy. Their advocacy did not so undermine the proper functioning of the adversarial process that the trial in this case cannot be relied on as having produced a just result.

B. There is no newly discovered evidence that requires a new trial.

¶22 Grady next argues, in the alternative, that if we are unconvinced that his trial attorneys were ineffective, then he is entitled to a new trial on the basis of newly discovered evidence. He insists that the discovery of Davis's medical reports and the exculpatory letter attributed to him, along with the affidavits of various lay witnesses and the psychological evaluation of Grady conducted in 2006, constitute newly discovered evidence requiring a new trial. We disagree.

¶23 We review a trial court's determination as to whether a defendant has established his or her right to a new trial based on newly discovered evidence for an erroneous exercise of discretion. *See* ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). A court properly exercises its discretion if it relies on the relevant facts in the record and applies the proper legal standard to reach a reasonable decision. ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. Thus, "[w]e will find an [erroneous exercise] of discretion if the [trial] court's factual findings are unsupported by the evidence or if the court applied an erroneous view of the law." ***State v. Martinez***, 150 Wis. 2d 62, 71, 440 N.W.2d 783 (1989).

¶24 To obtain a new trial based on newly discovered evidence, a defendant must establish by clear and convincing evidence that "'(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.'" ***State v. Armstrong***, 2005 WI 119, ¶161, 283 Wis. 2d 639, 700 N.W.2d 98 (citation omitted). Once those four criteria have been established, the court looks to "'whether a reasonable probability exists that a different result would be reached in a trial.'" ***Id.*** (citation omitted).

¶25 The trial court refused to grant a new trial based on what Grady contends is newly discovered evidence. Our review of the record does not support Grady's assertion that the medical records of Davis, and his purported letter sent to a judge in which he declares his innocence, meet the definition of newly discovered evidence because the evidence was readily available before the trial. We also agree with the trial court that the affidavits of the lay witnesses do not constitute new evidence. Most of these witnesses had been interviewed by the police before the trial; thus, their statements could have been obtained by Grady

before trial. Additionally, their postconviction affidavits, while suggesting that Davis spent the entire night at the home of a friend, do not specifically address Davis's whereabouts at the time of the murder. Moreover, we agree with the conclusions reached by the trial court that their statements were not material to an issue in the case, and we agree with the State when it argued in its brief, "the information was not material because at best it provided slight impeachment material." Thus, Grady's bid for a new trial on the basis of newly discovered evidence fails.

C. The trial court properly exercised its discretion during trial.

¶26 Grady next focuses on the trial court's evidentiary rulings shortly before and during the trial. He argues that the trial court erroneously exercised its discretion when it limited cross-examination of the police witnesses who interrogated Grady and Davis and when it refused to permit the testimony of Grady's grandfather, who would have recounted a conversation he had with Grady concerning the State's earlier offer of transactional immunity. Allegedly the grandfather would have testified that Grady told him he could not accept the offer because he was not involved in the robbery and murder.

¶27 WISCONSIN STAT. § 906.11(1) empowers the trial court to control the presentation of witnesses as long as that control is exercised "reasonabl[y,]" the truth is sought to be ascertained, time is not wasted, and the witnesses are protected "from harassment." ***Id.*** "Trial courts have broad discretion to admit or exclude evidence and to control the order and presentation of evidence at trial; [the appellate court] will upset their decisions only where they have erroneously exercised that discretion." ***State v. James***, 2005 WI App 188, ¶8, 285 Wis. 2d 783, 703 N.W.2d 727.

¶28 We first observe that Grady overstates the limitations placed on his attorney's cross-examination of the officer involved in the interrogations of Grady and Davis. Grady's attorney was able to establish that Grady denied his involvement in the crime for some time and that the second officer went into the interview believing a witness existed whose identification of Grady as the getaway driver was "strong." The attorney was also able to interrogate the officer about his testimony at the earlier-held ***Miranda-Goodchild*** hearing. Attorney Schiro was permitted to question why the officer wrote down Grady's statement rather than having Grady write it, and explored with the officer how a four-hour interview could end up as only a six-page report. Contrary to Grady's contentions in his brief, the trial court permitted questions concerning whether the officer would have stopped Grady if Grady told him something he did not believe to be true. The officer testified that he would not have stopped him under those circumstances.

¶29 After reviewing the transcript, we are satisfied that the trial court allowed Attorney Schiro a meaningful cross-examination of the officer and properly exercised its discretion in sustaining some of Attorney Schiro's questions. Attorney Schiro was also able to question Davis extensively about the plea negotiation he had with the State. The only information the trial court prohibited the jury from hearing was the penalty for felony murder. This was also a proper exercise of discretion, as Grady was charged with the identical crime and the jury is not entitled to know the criminal penalties that an accused faces because jurors decide only the facts, not the penalties. In Wisconsin, juries are not informed of the penalties that defendants face. *See* ***State v. Muentner***, 138 Wis. 2d 374, 391, 406 N.W.2d 415 (1987).

¶30 Grady is also critical of the trial court's refusal to have Grady's grandfather testify about Grady's rejection of transactional immunity on the grounds that he could not accept the proposal because he was innocent. Grady asserts that an accused's refusal to negotiate because of his or her claimed innocence is strong proof of innocence. The trial court denied the request, ruling that the danger of confusing the jury was outweighed by the testimony's relevance, and that pursuant to WIS. STAT. § 904.08, evidence of negotiations is not admissible. We agree, but for different reasons.

¶31 While a defendant's "consciousness of innocence" state-of-mind (offer to take a polygraph, offer to undergo DNA testing, etc.) can be material, ***State v. Santana-Lopez***, 2000 WI App 122, ¶4, 237 Wis. 2d 332, 613 N.W.2d 918, here the information concerning Grady's comments to his grandfather is prohibited because it was hearsay. Thus, his grandfather could not testify to Grady's prior statement. Besides, this was not an ordinary plea negotiation. The plea bargain was communicated to Grady by his grandfather. There are other reasons why Grady may have declined the offer of immunity which blur his claim of innocence. First, he may not have wanted to reveal the extent of his involvement in this crime to his grandfather for fear of losing his affection, or he may also have believed that the State did not have sufficient proof to convict him, since he knew that he was not present for the actual shooting. However, what is fatal to Grady's argument is the fact this evidence was excludable on hearsay grounds. WISCONSIN STAT. § 908.01(4)(a) reads: "**(4)** STATEMENTS WHICH ARE NOT HEARSAY. A statement is not hearsay if: (a) *Prior statement by witness*. The declarant testifies at the trial or hearing and is subject to cross-examination

concerning the statement…." Here, Grady did not testify. Consequently, for the reasons stated, the evidence was properly excluded.[6]

D. No new trial is needed here in the interest of justice.

¶32 Grady's final argument is that he is entitled to a new trial in the interest of justice. WISCONSIN STAT. § 752.35 (2005-06) allows the court of appeals to reverse a judgment and remand for a new trial where it appears from the record that: (1) "the real controversy has not been fully tried," or (2) where it is possible that justice has for any reason miscarried. ***Vollmer v. Luety***, 156 Wis. 2d 1, 19, 456 N.W.2d 797 (1990). We review a trial court's ruling on a postconviction motion for a new trial in the interest of justice for an erroneous exercise of discretion. ***State v. Williams***, 2006 WI App 212, ¶13, 296 Wis. 2d 834, 723 N.W.2d 719. But it is also within our own discretion to grant a new trial if we conclude the real controversy was not fully tried. Sec. 752.35. Thus, we independently review the record to determine whether a new trial is warranted in the interest of justice. ***Williams***, 296 Wis. 2d 834, ¶12.

¶33 Grady claims we should order a new trial because this was a close case, noting that, at one point, the jury indicated it was deadlocked. He rehashes his arguments concerning the failure to call expert witnesses to testify to Grady's predilection to be coerced by the police and his belief that a witness should have

[6] Grady did state in a one-sentence argument that his constitutional right to present a defense was violated when the trial court refused to permit his grandfather to testify. Grady failed to develop this argument and did not raise it at trial. Therefore, we decline to address it. *See* ***State v. Rogers***, 196 Wis. 2d 817, 826, 539 N.W.2d 897 (Ct. App. 1995) (failure to raise specific challenges in the trial court waives the right to raise them on appeal); ***State v. Johnson***, 184 Wis. 2d 324, 344, 516 N.W.2d 463 (Ct. App. 1994) ("On appeal, issues raised but not briefed or argued are deemed abandoned.").

been called to discuss false confessions in general. He also points to the fact he was required to go to trial with an attorney who had represented him for just nineteen days. We are not persuaded by his arguments.

¶34 A defendant is not entitled to a perfect trial but to a fair trial. ***State v. Hanson***, 2000 WI App 10, ¶20, 232 Wis. 2d 291, 606 N.W.2d 278. His protestations notwithstanding, Grady had able representation and the jury was well aware of the credibility issues surrounding Davis's testimony. None of the errors argued by Grady rise to the level of requiring a new trial, because the outcome of the trial was reliable. For the reasons stated, we affirm.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.