COURT OF APPEALS
DECISION
DATED AND FILED

March 3, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1430-CR **Cir. Ct. No. 2011CF3881**

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

DUPREE M. ROGERS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed.*

Before Kessler and Brennan, JJ., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Dupree M. Rogers appeals a judgment convicting him of attempted first-degree intentional homicide in a domestic abuse incident and first-degree recklessly endangering safety while armed with a dangerous weapon. Rogers argues that: (1) he received ineffective assistance of trial counsel

because his attorney should have raised the issue of Rogers' competency to stand trial; and (2) there was insufficient evidence to support the conviction. We affirm.

¶2 Rogers first argues that he received ineffective assistance of counsel because his trial lawyer should have raised the issue of his competence to stand trial. To establish ineffective assistance of counsel, a defendant must show that his lawyer's performance was deficient and that he was prejudiced by the deficient performance. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). A lawyer who has reason to doubt a client's competence to stand trial performs deficiently if he or she fails to raise the issue with the circuit court. ***State v. Johnson***, 133 Wis. 2d 207, 220, 395 N.W.2d 176 (1986). A claim that trial counsel provided constitutionally ineffective assistance "cannot be reviewed on appeal absent a postconviction motion in the trial court." ***State v. Balliette***, 2011 WI 79, ¶29, 336 Wis. 2d 358, 805 N.W.2d 334 (quotation marks and citation omitted). "The hearing is important not only to give trial counsel a chance to explain his or her actions, but also to allow the trial court, which is in the best position to judge counsel's performance, to rule on the motion." ***State v. Curtis***, 218 Wis. 2d 550, 554, 582 N.W.2d 409 (Ct. App. 1998). Rogers did not file a postconviction motion alleging ineffective assistance of trial counsel. Therefore, he is procedurally barred from raising this argument in the context of this appeal.

¶3 Next, Rogers argues that there was insufficient evidence to support the conviction because there was no evidence from which the jury could reasonably infer that he intended to kill M.B. We will not "reverse a criminal conviction unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Hughes***, 2011 WI App 87, ¶10, 334 Wis. 2d

445, 799 N.W.2d 504 (citations and internal quotation marks omitted). "Reasonable inferences drawn from the evidence can support a finding of fact and, if more than one reasonable inference can be drawn from the evidence, we must adopt the inference that supports the verdict." ***Id.***

¶4 M.B. testified that Rogers became angry because she told him she wanted to end their marriage. She testified that he punched her in the face, beat her with his fists and a metal towel rack, repeatedly kicked her, and told her that "it wasn't going to be that easy" if she wanted to leave him. M.B. testified that Rogers then stabbed her multiple times, perforating her bladder, and nicking a kidney and an ovary. As Rogers stabbed her, he said, "if I'm going to go to jail, I might as well go to jail for killing you." M.B. testified that Rogers then threw a large, heavy flat-screen T.V. at her as she lay on the floor bleeding. M.B.'s testimony is more than sufficient to support the jury's inference that Rogers acted with intent to kill M.B.

¶5 Rogers argues that the fact that he stabbed M.B. thirteen times shows that *he did not intend to kill her* because he could easily have done so if he wanted to. Rogers contends that the only reasonable inference is that he was purposefully trying *not* to inflict a mortal wound. The inference Rogers would have us draw is the antithesis of reasonable. Rogers' brutal attack caused M.B. serious injuries and could have killed her. There was sufficient evidence presented at trial to support the jury's verdict.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).