COURT OF APPEALS
DECISION
DATED AND FILED

July 26, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP1962-CR **Cir. Ct. No. 2009CF227**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDWARD ALEX MEADE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed*.

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

¶1 PER CURIAM. Edward Alex Meade appeals from a judgment of conviction, entered upon a jury's verdicts, on three counts: second-degree sexual assault with the use of force, second-degree sexual assault causing injury, and second-degree reckless injury. Meade also appeals from an order denying his

postconviction motion, which sought a new trial based on alleged ineffective assistance of trial counsel. He argues that the trial court erred in denying that motion without a hearing. We reject Meade's argument and affirm.

¶2 Meade's charges stem from what began as a consensual sexual encounter with his girlfriend. She was standing with her hands against the wall, and Meade was digitally penetrating her vagina. However, as the trial court summarized, Meade's activity

> became increasingly more forceful and increasingly more painful as he continued to do it more vigorously, forcing his whole hand into her vagina. She stated that within about a minute she told [Meade] to stop because he was hurting her but that the defendant "just kept on jamming his hand up [her] vagina" harder and more forcefully. The victim continued to ask [Meade] to stop…. [Meade] did not stop.… The victim testified that [Meade] jammed his hand inside of her with such force and intensity that he lifted her off the floor, that she then felt something inside of her tear and felt a gush of liquid start to flow out of her vagina.… He continued to force his hand into the victim's vagina while she was screaming hysterically and crying in pain. When [Meade] finally stopped and pulled his hand out, there was blood from his hand to his elbow, blood all over the victim's body and blood all over the floor. [Meade] asked the victim if she was okay and asked her if she wanted to take a shower.

¶3 Meade had admitted to the digital penetration but stated it was limited to three fingers. His explanation was that at some point, one of them lost their footing, causing them both to fall with his fingers still in the victim's vagina. He denied that she was crying or resisting or that she asked him to stop. Meade also testified that she had bled during a previous sexual encounter, though this was evidently menstrual blood. The jury convicted Meade on all three counts.

¶4 Meade moved to vacate his conviction, alleging ineffective assistance of trial counsel. He claimed counsel had failed to present testimony

from neighbor Andrew Jefferson, failed to present evidence of other consensual sexual encounters where the victim bled, and failed to challenge the admissibility of Meade's statement to police. The trial court denied the motion without a hearing. Meade appeals. Additional facts will be discussed below as necessary.

I. Standard of Review

¶5 Whether a defendant's postconviction motion alleges sufficient facts to entitle the defendant to a hearing is subject to a mixed standard of review. ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. Whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief presents a question of law that we review *de novo*. *See* ***id.*** If the motion raises such facts, the trial court must hold an evidentiary hearing. *See* ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996); ***Nelson v. State***, 54 Wis. 2d 489, 497, 195 N.W.2d 629 (1972). If the motion does not raise facts sufficient to entitle the defendant to relief, or if the motion presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, then the trial court has the discretion to grant or deny a hearing. ***Allen***, 274 Wis. 2d 568, ¶9. Discretionary decisions are reviewed for an erroneous exercise of that discretion. *See* ***id.***

¶6 Meade's motion is premised on ineffective assistance of trial counsel. "'To prevail on an ineffective assistance of counsel claim, the defendant must show that counsel's actions or inaction constituted deficient performance and that the deficiency caused him prejudice.'" ***State v. Love***, 2005 WI 116, ¶30, 284 Wis. 2d 111, 700 N.W.2d 62 (citations omitted). Showing deficiency requires the defendant to establish that counsel's conduct falls below an objective standard of reasonableness. ***Id.*** Showing prejudice requires the defendant to demonstrate that

"'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" ***State v. Thiel***, 2003 WI 111, ¶20, 264 Wis. 2d 571, 665 N.W.2d 305 (quoting ***Strickland v. Washington***, 466 U.S. 668, 694 (1984)). Our review of the motion is limited to its four corners.[1] ***Allen***, 274 Wis. 2d 568, ¶27.

II. Discussion

A. The Neighbor's Testimony

¶7 Meade and his victim had differing testimony about what happened after their sexual encounter went bad. Thus, Meade stated, "the credibility of each was most important for the jury to consider." Meade believes that trial counsel should have called his neighbor, Andrew Jefferson, to testify in order to bolster Meade's credibility. According to Jefferson's affidavit, he would have testified that: he and Meade live in the same building and his unit shares a common wall with Meade's unit; it was common to hear some noise from adjoining units; when Meade was arrested, Jefferson went to Meade's unit to pick up Meade's son, who was still asleep, so "whatever incident had occurred had obviously not awaken[ed] him"; and Jefferson's children often "camp out" in the lower level of his unit and are expected to report any unusual noises, both were awake until police arrived that night, and neither heard anything unusual that night.

[1] Although our review is so constrained, that limitation is not license for appellate counsel to make his argument by reference ("The foundation for the finding that this argument has merit is to be found in the presentation of facts and law as clearly put forth in Mr. Meade's motion."). We expect arguments to be fully briefed; otherwise, we may decline to review them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶8 The trial court rejected this argument. It concluded there was not a reasonable probability of a different result had the testimony been introduced. It explained that Jefferson did not expect to testify that *he* was in a position to have heard any noise, only that his children were in the lower part of the unit and neither reported anything unusual to him. Jefferson also noted that he considered Meade a friend, which would have been a factor in evaluating his credibility. The trial court concluded that any support to Meade's credibility from Jefferson's testimony would have been *de minimus*.

¶9 We additionally note that Jefferson's observations about Meade's son establish nothing: the affidavit includes no time frame, and the fact that the child was asleep when Jefferson arrived to pick him up does not mean that the child was not previously awakened by some disturbance in the home. Thus, the assertion that there must have been no disturbance because the child was asleep when Jefferson arrived is too conclusory. We therefore agree with the trial court that Jefferson's proposed testimony does not create a reasonable probability of a different result. Meade has failed to allege sufficient facts to show entitlement to relief on this ground.

B. Evidence of Other Sexual Encounters

¶10 Defense counsel had originally attempted to admit, with a pretrial offer of proof, evidence that Meade had in previous instances used his hand and fingers to stimulate the victim's genitals, often while she was menstruating, which would lead his hands to become bloody. After these encounters, Meade would wash his hands and the victim would shower. The implication Meade wanted the jury to discern was that Meade had not assaulted the victim but, rather, the pair were having a sexual encounter like ones they had previously had. The State

objected, and it appears that the matter was not litigated further in the pretrial stage.

¶11 Meade complains trial counsel should have pursued the matter further. He contends that

> [n]o small part of the States' [sic] case against Mr. Meade was the fact that at the end of the alleged assault he chose to begin cleaning up the blood on the floor and offer [the victim] a shower rather than calling 911.… [T]he jury was never presented any reasonable basis to doubt that the clean up and shower offer may have had another explanation other than the defendants' [sic] guilt.

¶12 During the State's cross-examination, however, Meade testified that he had not sought medical attention for the victim because the same thing—that is, bleeding—had occurred previously. This led to a sidebar and a brief examination of Meade outside the jury's presence. To avoid a mistrial, the parties entered into a stipulation that effectively allowed Meade to testify to one prior instance of a sexual encounter leading to bleeding.

¶13 In denying the postconviction motion, the trial court noted that evidence relating to "one prior sexual activity/bleeding incident" had been permitted. It rejected Meade's contention that evidence of all bleeding incidents was necessary. It explained that it would not have granted any motion so requesting, at least in part because of the protections of the Rape Shield Law. The trial court also explained that there was no reasonable probability a jury would conclude that this incident was a result of consensual sexual activity. The bleeding in this case was extreme, as supported by the victim's blood-soaked clothing that was admitted into evidence, and medical evidence established that the victim had blood clots and vaginal lacerations that required cauterization. Meade appears to recognize this as well, conceding that the bleeding in the current

instance was "not at the same level" as in the past. We conclude Meade has not alleged sufficient facts to entitle him to relief on this basis, either.

C. Meade's Statement to Police

¶14 Meade gave a statement to police in which he acknowledged that the victim was bleeding abnormally, that she was crying, that she said she needed to go to the hospital and yet he rendered no aid, and that he knew just his fingers would not cause her to bleed like she was. Prior to trial, Meade waived a ***Miranda/Goodchild*** hearing.[2] He says he "was only told that it would be best for him to do so and little more." Meade contends trial counsel was ineffective for not pursuing a suppression motion. It appears that Meade's contention is that he was hungover when he gave his statement to police, so the statement should either have been suppressed or the videotape of it shown to the jury to determine how much weight to give his statement. The trial court rejected the motion because the video was not in the record and because intoxication does not undermine voluntariness, so it concluded that the claim there was a "fair argument for suppression" was simply insufficient.

¶15 We agree with the trial court, though we reject this argument for another reason. The postconviction motion does not allege a violation of ***Miranda*** or of ***Goodchild***. There may be an implicit claim that Meade's hung-over state rendered his ***Miranda*** waiver and his subsequent statement involuntary, but

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966); ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965). A ***Miranda*** hearing is used to determined whether a defendant properly waived his or her constitutional rights before giving a statement, *see* ***State v. Woods***, 117 Wis. 2d 701, 714-15, 345 N.W.2d 457 (1984), and a ***Goodchild*** hearing determines the voluntariness of such a statement, *see* ***Goodchild***, 27 Wis. 2d at 264-65.

Meade does not so allege. It is his obligation to raise sufficient facts to be entitled to a postconviction motion hearing; it is not the court's job to infer them. *See* ***Bentley***, 201 Wis. 2d at 313.

¶16 With insufficient facts alleged in the postconviction motion, Meade failed to fulfill the necessary burden. The trial court properly denied the motion without a hearing.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2009-10).