**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**July 31, 2012**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2011AP1489-CR** **Cir. Ct. No. 2008CF3**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JEREMIAH R. CONNOUR,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Shawano County: JAMES R. HABECK, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 HOOVER, P.J. Jeremiah ("Fred") Connour appeals a judgment of conviction for first-degree intentional homicide and an order denying his motion

for postconviction relief.[1] Connour argues his trial counsel provided ineffective assistance for several reasons. We reject Connour's arguments and affirm.

## BACKGROUND

¶2 Michael Zrenner and Connour returned to Connour's apartment in Shawano around 9 p.m. after spending several hours at the bars. Zrenner had been staying off-and-on at Connour's apartment. When they returned to the apartment, the live-in babysitter, thirteen-year-old Jesse McRoberts, was watching television on the living room couch. Connour's three infant children were in their bedrooms. McRoberts and his mother had moved into Connour's apartment approximately four months earlier. Miranda Blazer, Connour's ex-girlfriend and the mother of his three children, had recently left Connour and was involved with another man.

¶3 Zrenner was stabbed to death in the kitchen of the apartment that night. At trial, the jury was presented with two versions of what occurred. The State elicited testimony showing that Connour had stabbed Zrenner during a fight. The defense, relying primarily on Connour's own testimony, maintained that Zrenner committed suicide, stabbing himself in front of Connour.[2]

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[1] Connour was also convicted of false imprisonment and four counts of bail jumping. Connour's brief states: "Other convicted charges also sprang from the proceedings which also are hereby appealed, but the homicide charge is the focus of this appeal." Connour does not, however, develop any arguments as to the other charges. We therefore do not address them further.

[2] Connour's thirty-eight-page statement of the case includes primarily verbatim Q & A trial testimony, but nonetheless omits relevant evidence necessary to address his postconviction claims. Most of the remainder of Connour's recitation of the "facts" inappropriately consists of several pages of argument. *See* ***Dawson v. Goldammer***, 2006 WI App 158, ¶1 n.3, 295 Wis. 2d 728, 722 N.W.2d 106 (a "fact section should objectively recite the historical and procedural facts; it is no place for argument or 'spin'"). That is not effective appellate advocacy.

State's case

¶4 McRoberts testified to the following at trial. Sometime after Connour and Zrenner came home, McRoberts overheard Zrenner talking on the phone with Dawn Kaquatosh about where Blazer was that night. Connour appeared to be very interested in the conversation, and became angry and then spoke on the phone with Kaquatosh himself.

¶5 Zrenner attempted to leave the apartment, but Connour pushed Zrenner and refused to allow him to leave until Zrenner told him where Blazer was. McRoberts had a clear view of the altercation from where he was sitting on the couch. As Zrenner continued trying to leave, Connour head-butted Zrenner, and the phone dropped on the living room carpet. The two men started grappling and went to the floor. They moved into the kitchen where McRoberts could no longer see them, but he could hear the two men "wrestling and rustling around." McRoberts was scared, so he picked the phone up from the carpet and called his mother. McRoberts told her that Connour and Zrenner were fighting, and his mother said she would call the police.

¶6 After ending the call with his mother, McRoberts heard more rustling around in the kitchen, and then a drawer open. McRoberts said that, by its sound, he identified the drawer being opened as the one that was broken and contained metal utensils. He then heard "more clinging around," and Zrenner saying to Connour: "Put that away, Fred. Why do you always do this?" McRoberts next heard a "gargling" sound, and then Connour said, "Talk now. See if you can say something now. See if you're big and bad now." Moments later, McRoberts heard Connour say in a worried tone, "Talk to me. Talk to me."

Connour soon appeared and, putting his hands up in the air, told McRoberts, "Mike just stabbed himself."

¶7 Kaquatosh testified as follows about her phone conversation that night with Zrenner and Connour. Zrenner told her he wanted to leave Connour's apartment, and they made plans to meet up and visit Blazer and Blazer's new boyfriend. Kaquatosh heard Connour in the background say to Zrenner, "Get the fuck off my phone. You're not paying the bill." Connour then got on the phone and asked if he could come over to her house, and she told him he could not. Kaquatosh soon heard the phone drop onto something soft, and Zrenner saying, "You ain't gotta do this, man. You ain't gotta do this." She immediately drove to Blazer's boyfriend's place to tell Blazer to get to the apartment to protect her kids from the fight. Zrenner did not say anything to her during the call that suggested he was suicidal.

¶8 Doctor Mark Joseph Witeck, a forensic pathologist, performed the autopsy on Zrenner's body. Witeck found two separate wound tracks inside Zrenner's chest from a single entrance point, indicating that Zrenner had been stabbed twice in the same location. Witeck opined, "Based on the [eight-inch] length of the [knife blade], it would be very difficult for Mr. Zrenner to stab himself in the left side of the chest at the angle seen but not impossible." His report also indicated the wound was "not … typical" for a suicide, which "are on the front of the chest overlying the approximate area of the heart and lungs, or the person cuts their throat or their wrist." He also explained that suicides by a sharp instrument often exhibit "hesitation marks," additional shallow cuts near the fatal cut, and that there were no such marks on Zrenner's body. Witeck observed Zrenner had a cut to his thumb, which he believed was consistent with a defensive

wound caused by Zrenner trying to stop the approaching knife blade. Based on his examination, Witeck determined that the stabbing was a homicide.

¶9 Officers Ryan Atkinson and Kurt Kitzman of the Shawano Police Department interviewed Connour in the early morning hours following the stabbing. Atkinson read at trial Connour's account of the stabbing from the interview transcript. At one point, officers asked Connour to demonstrate where Zrenner stabbed himself. Atkinson said Connour put both hands together and plunged them straight into his stomach. Connour later provided a second demonstration of the stabbing, this time plunging his left hand only into his upper stomach. Atkinson testified that Connour was not handcuffed at the time.

¶10 Atkinson also read Connour's explanation of how Zrenner's body came to rest in the position in which officers found him, crouched on both knees and leaning up against the kitchen stove. Connour stated Zrenner fell "face first" onto the floor after stabbing himself, and that Connour then "rolled him over." When told that Zrenner was not lying flat when they found him, Connour stated, "He was rolled on his side." When told Zrenner's body was actually found seated up and hunched over, Connour responded, "He kind of hit his head on the cabinet." When an officer explained that he discovered Zrenner "seated and he was sitting up," Connour then explained, "He fell like … kind of like this, right next to my stove, so I got him up kind of like this against the stove." Additionally, Atkinson testified that he himself discovered the bloody knife in the kitchen sink.

¶11 Rita Frech, Zrenner's mother, testified that she talked with Zrenner approximately every other week and he never seemed too depressed or sounded like "he would do anything to himself." Frech stated Zrenner said good-bye at the end of their conversations "all the time."

¶12 Attorney James Chereskin testified that he encountered Connour around 7:30 p.m. on the evening Zrenner was stabbed. Chereskin was at a local bar and spoke with Connour, who claimed to be an Iraq war veteran. Chereskin, a veteran himself, stated he determined that Connour was "full of BS and I told him that." Connour got angry, and Chereskin was told that Connour wanted to fight, but Chereskin ignored him. Chereskin stated Zrenner calmed Connour down and diffused the situation.

Defense's case

¶13 Connour testified as follows. When he and Zrenner returned to the apartment from the bars, Connour called Kaquatosh on his home phone to "[s]hoot the shit" and eventually he handed the phone to Zrenner. Connour did not pay close attention to Zrenner's conversation with Kaquatosh. While Zrenner was still on the phone, Zrenner tried to leave the apartment cradling three cans of beer in his arms. Connour told Zrenner, "Hey, man, you're not going to walk down the street with those cans of beer. Are you stupid?" Connour grabbed the sleeve of Zrenner's jacket to prevent him from leaving. Zrenner said, "Don't fucking touch me," and hit Connour on the side of his face. Connour later clarified that he grabbed one of the beers and Zrenner put the other two down on the kitchen counter before striking him. Zrenner's blow knocked him down to the kitchen floor and he lost consciousness.

¶14 Connour stated the next thing he saw was that Zrenner had a knife, but by the time he realized Zrenner had a knife in his hands "it was already too late." He did not recall any conversation between the two men at this time. Connour also had no "recall of any particular words or anything being said like that" at the time. Upon repeated prompting by counsel, Connour agreed that

Zrenner had said "something about his children and Christmas" immediately before stabbing himself. Connour pulled the knife out of Zrenner and put it in the sink. He exited the kitchen and told McRoberts that "Mike stabbed himself." He then answered his ringing phone, and it was McRoberts' mother, who stated the police were on their way. When the officers arrived, he showed Atkinson where the knife was.

¶15 Connour denied head butting Zrenner, and said he did not recall wrestling on the floor with him or fighting except for Zrenner's single blow. Connour denied saying, "Let's see how big and bad you are" to Zrenner. Connour stated Zrenner had frequently expressed thoughts of suicide, and did so almost "every time he drank," which was four or five times per week. When asked whether McRoberts had just made up his entire testimony, Connour said, "he possibly misconstrued a lot of things, yes." Connour agreed he and McRoberts got along fine and there was no reason for McRoberts not to like him. Connour suggested McRoberts "may have misconstrued a lot" because of some unspecified "past history" Connour had with McRoberts' mother.

¶16 Connour testified that Kaquatosh was lying when she said she heard him say, "You don't pay the fucking bill. Get off the phone," and when she heard Zrenner say, "You don't have to do this man." Connour asserted Kaquatosh lied because "[s]he can't stand me." Connour also claimed that Atkinson lied when he testified that he found the knife in the sink, not that Connour showed him where the knife was.

¶17 Doctor Brian Peterson, a forensic pathologist hired by Connour's defense to review Witeck's autopsy report, testified that his professional opinion based on the materials provided was that Zrenner's death could have been either a

homicide or a suicide. Peterson opined that the cut on Zrenner's thumb could have been caused by Zrenner guiding the blade with the other hand while stabbing himself. As to hesitation marks, Peterson said he had seen suicides by stabbing to the chest with several hesitation marks, and others with no such marks. On cross-examination, Peterson agreed that neither of Connour's demonstrations to officers of Zrenner's stabbing motions were consistent with Zrenner's actual wounds.

¶18 Blazer also testified, as follows. Zrenner told her he felt he "wasn't no good to anybody." He "never talked about anything—harming himself or wanting to die when he was sober, only when he was drunk, and most every time he was drunk." Zrenner was drunk "[e]very day." On the night of his death, Zrenner called and told Blazer he was at Connour's house and was going to put the kids to bed. Zrenner ended the conversation with "good-bye," which was unusual because Zrenner believed that good-bye "is forever."

¶19 On cross-examination, Blazer did not recall whether she had said anything about Zrenner having been suicidal to investigators when she was interviewed three days after Zrenner's death. She agreed that she would have been leaving out something important if she had failed to provide such information. Blazer also acknowledged telling police in the first interview that Connour had attacked Zrenner just one week before the stabbing in a dispute over where Blazer was staying that night. She had stated Connour was angry with Zrenner that night because he believed Zrenner was not telling him the truth about where she was. Blazer acknowledged that she had since reconciled with Connour and had been visiting him regularly in jail.

¶20 Blazer's younger sister, Tammy, also testified that Zrenner talked about suicide and "how life didn't matter to him anymore because he wasn't there

to help other people" when he was drunk. Tammy said that Zrenner called her the night of his death and told her that he had just put Mandy's kids to bed. Zrenner then said "good-bye," which later seemed strange because Zrenner "hated the word good-bye, because to him good-bye was forever."

¶21 Tammy testified on cross-examination that Connour picked on Zrenner when he drank, and the men argued whenever Zrenner refused to tell Connour where Blazer was staying. Tammy acknowledged telling an officer a week before trial that she did not believe Zrenner "would commit suicide because he could not see his kids" and she "could never see [Zrenner] … commit suicide in front of kids."

## DISCUSSION

¶22 Connour argues his trial counsel was ineffective for four reasons. To prevail on this claim, Connour must demonstrate that counsel's performance was deficient and that he suffered prejudice as a result. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). If either prong is not shown, we need not address the other. ***State v. O'Brien***, 223 Wis. 2d 303, 324, 588 N.W.2d 8 (1999). To prove deficient performance, Connour must show that counsel's act or omission was "objectively unreasonable." *See* ***State v. Oswald***, 2000 WI App 2, ¶63, 232 Wis. 2d 62, 606 N.W.2d 207. Prejudice exists if there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different. We defer to the circuit court's factual determinations, but independently assess whether the facts demonstrate deficient performance and prejudice. *See* ***O'Brien***, 223 Wis. 2d at 324-25.

¶23 Connour first argues his attorney should be found ineffective for "his failure to object to, or in some other way prevent the admission of, the unduly

prejudicial and/or irrelevant evidence that Connour tried to incite an altercation with Attorney James Chereskin earlier on the night of" Zrenner's stabbing death. While Connour asserts the evidence was either irrelevant under WIS. STAT. § 904.01[3] or unduly prejudicial under WIS. STAT. § 904.03, and that a ***Sullivan***[4] analysis should have been undertaken at the trial level, he does not provide any such analysis in his brief. We may disregard undeveloped arguments. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

¶24 On the merits, evidence that Connour was violent or confrontational earlier in the evening was clearly relevant—although Connour's argument fails to even address the content of Chereskin's testimony.[5] However, the State concedes that the evidence was prejudicial and likely subject to exclusion upon objection.

¶25 Aside from observing that Chereskin's testimony was the only evidence showing Connour was "in a fighting mood," Connour develops no prejudice argument. Regardless, we agree with the State that there is no reasonable possibility that exclusion of Chereskin's testimony, in whole or in part, would have resulted in Connour's acquittal. As the trial court observed, the testimony was "tangential" and "it wasn't very important to the case."

¶26 Chereskin's testimony was relatively brief in the scope of the four-day trial and would have been of little use to the jury in determining what actually

[3] All references to the Wisconsin Statutes are to the 2009-10 version.

[4] *See* ***State v. Sullivan***, 216 Wis. 2d 768, 576 N.W.2d 30 (1998).

[5] Connour set forth only one statement from Chereskin's testimony in his brief's lengthy, incomprehensible fact section. The statement consists of a response to an unidentified question. Connour's argument, however, fails to discuss that testimony or any other.

transpired in the apartment. While the prosecutor referenced the conflict between Connour's and Chereskin's testimonies in closing argument, it was offered as just one of fifteen separate instances in which Connour's testimony contradicted that of other witnesses. Connour's credibility was undone primarily by the facts that: (1) his version of what happened in the apartment was contrary in nearly all its particulars to the testimony of McRoberts and Kaquatosh; (2) his version was fluid and inherently unbelievable; (3) his demonstrations and explanation of the stabbing conflicted with the physical evidence; and (4) he failed to offer a reasonable explanation as to why McRoberts would fabricate his testimony.

¶27 Further, as for testimony from Mandy and Tammy Blazer about Zrenner being suicidal, this testimony was general and would have been of limited value in determining what happened in Connour's apartment on that night in particular. The sisters' claims that Zrenner said he had put the children to bed was contradicted by Connour himself, who testified the kids were not in bed when they left. The sisters' respective testimony about Zrenner saying good-bye, and that this was unusual because he purportedly believed "good-bye is forever," was undermined by Zrenner's own mother, who said her son ended conversations with good-bye "all the time." Moreover, a jury likely would have considered that Connour was the father of Mandy's children, that she and Connour had since reconciled, and that she said nothing about Zrenner being suicidal when she first talked to investigators.

¶28 Connour next argues his trial counsel was ineffective for failing to point out inconsistencies in McRoberts' testimony. Connour emphasizes that at the preliminary hearing McRoberts stated Connour head butted Zrenner before Zrenner tried to leave, but at trial indicated the head butt occurred while Zrenner was trying to leave. Connour asserts that the trial testimony is more damaging

because it somehow makes him look more controlling or aggressive. We reject this nonsensical assertion.

¶29 We also reject Connour's assertion that the inconsistency in and of itself undermines McRoberts' credibility. As the State explains, the inconsistency likely flowed from the leading manner and order of the prosecutor's questioning at the preliminary hearing. Regardless, the inconsistency was minor and the trial testimony was consistent with the version McRoberts originally provided to police when he was interviewed. Thus, it would have been reasonable for trial counsel not to dwell on the matter when it was Connour's position that no head butt occurred. Reference to McRoberts' police interview on redirect could have had the undesired effect of strengthening his credibility, particularly if the jury was presented with the manner of questioning at the preliminary hearing. Thus, counsel was not deficient for failing to question McRoberts about the inconsistency.

¶30 Connour also alleges a second "inconsistency" because, in response to a specific question at trial, McRoberts confirmed and testified about a conversation concerning Connour's children, but he did not mention the matter at the preliminary hearing. There is no inconsistency here; Connour fails to demonstrate that McRoberts was asked about the matter at the preliminary hearing. Indeed, trial counsel explained that he expected that the statement would be offered at trial because, while it may not have been offered at the preliminary hearing, counsel believed it was in the police reports. Counsel was not deficient for failing to manufacture an inconsistency.

¶31 Next, Connour contends trial counsel was ineffective for failing to sufficiently elicit evidence of, or argue, Zrenner's suicidal ideation. Connour

argues that counsel should have further stressed suicide as a theme in closing argument. Connour suggests, for example, that trial counsel should have "remind[ed] the jury that best friends rarely stab each other, and [that] extremely poorly-sighted people like [Connour] are rarely violent aggressors[.]"

¶32 Connour fails, however, to identify any specific evidence of suicidal ideation that trial counsel failed to present. In fact, counsel sought to obtain any records pertaining to suicide from two county jails where Zrenner spent time incarcerated, examined court records from Zrenner's past criminal cases, and hired a private investigator to uncover evidence that Zrenner was suicidal. Counsel testified, "I think we had what there was to have" regarding evidence of suicidal ideation. Further, the absence of additional evidence of suicidal tendencies on the fatal night from Connour himself, who was with Zrenner the whole time, suggests that additional evidence did not exist. Finally, trial counsel repeatedly specifically argued and implicitly suggested in closing argument that McRoberts was suicidal, all as part of the broader argument that the death was not a homicide. Connour has not come close to demonstrating that trial counsel performed deficiently regarding evidence or argument concerning suicide.

¶33 Finally, Connour argues trial counsel was ineffective for allowing the jury to wrongly believe that he lied about losing consciousness. Connour testified he lost consciousness after Zrenner hit him and knocked him to the floor. Nurse Emily Hamm, who examined Connour at the Shawano Medical Center in the early morning hours after the stabbing, was called as a rebuttal witness. Hamm testified that she had checked a box on a medical form indicating that Connour told her he had not lost consciousness. The prosecutor noted this inconsistency in closing argument as one of the fifteen instances where Connour's testimony contradicted that of another witness.

¶34 Connour argues counsel was deficient for failing to introduce a transcript at trial to refute Hamm's testimony. The transcript is of an audio recording the officers made that captured at least part of Connour's contact with medical staff at the hospital. From this transcript, there is no indication of what Connour may have told Hamm about losing consciousness. However, the transcript shows that officer Kitzman at one point asked Connour while in the hospital, "Did you get knocked out?" and Connour responded, "I think so."

¶35 Any deficiency in failing to introduce the transcript was not prejudicial. The jury heard an audio recording of Connour's jail interview where he twice mentioned "coming to" after being knocked down. Thus, the jury already heard evidence that Connour had reported that morning that the blow knocked him unconscious. Additionally, because the hospital transcript does not demonstrate Hamm was present at the time of Connour's statement to Kitzman, it would not prove Hamm was mistaken that Connour told her he had not lost consciousness. Thus, while helpful to his cause, the transcript was not the silver bullet that Connour makes it out to be. In any event, for the reasons discussed above regarding Connour's first allegation of ineffective assistance, we are not convinced that the omission of the transcript had any effect on the trial outcome. Among other things, Connour's testimony was not believable and it contradicted the testimony from numerous other witnesses. The combined prejudicial effect of counsel's errors also fails to undermine our confidence in the trial outcome.

*By the Court.*—Judgment and order affirmed.

Not recommended for publication in the official reports.