

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 7, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1637-CR

Cir. Ct. No. 2014CF2602

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CHRISTOPHER DELVIN TAYLOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Milwaukee County: REBECCA A. DALLET, Judge. *Affirmed.*

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

¶1 PER CURIAM. Christopher Delvin Taylor appeals a judgment convicting him of substantial battery, with a dangerous weapon, as an incident of domestic abuse. He also appeals the circuit court's order denying his

postconviction motion. Taylor argues that he received ineffective assistance of trial counsel. We affirm.

¶2 Taylor was charged with substantial battery for stabbing K.B. with a knife during a fight. Before trial, K.B. recanted her allegation that Taylor stabbed her, saying that she had been cut by metal on a fence she was trying to jump when leaving Taylor's home. She signed an affidavit at Taylor's lawyer's office to this effect. K.B. did not appear as a witness on the date that trial was initially scheduled. The circuit court adjourned the trial. On the rescheduled trial date, K.B. again did not appear. Taylor's lawyer moved to continue the trial again, over Taylor's objection. The circuit court denied the motion and the trial proceeded. The jury convicted Taylor.

¶3 Taylor argues that he received ineffective assistance of trial counsel. To prove a claim of ineffective assistance of counsel, a defendant must show that his lawyer performed deficiently and that this deficient performance prejudiced him. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). The test for deficient performance is whether counsel's representation fell below objective standards of reasonableness. *State v. Carter*, 2010 WI 40, ¶22, 324 Wis. 2d 640, 782 N.W.2d 695. To show prejudice, "the defendant 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.*, ¶37 (citation omitted). A reviewing court may dispose of a claim of ineffective assistance of counsel on either ground. *Strickland*, 466 U.S. at 697.

¶4 Taylor first argues that his trial lawyer should have subpoenaed K.B. to secure her attendance at trial. Taylor's lawyer told the circuit court that he did not subpoena K.B. because he assumed that she would come. Even if Taylor's

lawyer's failure to subpoena K.B. constituted deficient performance, Taylor cannot show that he was prejudiced by his lawyer's actions. The prosecutor informed K.B. of the trial date, left her telephone messages about the trial, and attempted to serve K.B. with a subpoena to attend trial three times, finally leaving the subpoena posted at her last known residence. Sometime thereafter, K.B. telephoned the prosecutor and said that she was not available. K.B. was thus aware of the trial date and the subpoena, but did not come to the trial. If Taylor's trial lawyer had subpoenaed K.B., it would have added nothing—K.B. was already under subpoena to attend. Therefore, we reject Taylor's claim of ineffective assistance of trial counsel based on the fact that his lawyer did not subpoena K.B.

¶5 Taylor next argues that his trial lawyer provided him with constitutionally ineffective assistance of counsel for failing to investigate Sasha Ferguson as a potential trial witness. He contends that K.B. told his lawyer that Ferguson was at the scene and would corroborate her recantation. Taylor filed an affidavit from Ferguson with his postconviction motion, in which Ferguson states that K.B. "called me to pick her up," she saw K.B. "jump the fence in the yard," K.B. "did not say to me that Mr. Taylor stabbed her," K.B. "did not realize she was bleeding," and when I "informed [K.B.] that she was bleeding ... K.B. was surprised."

¶6 Again, Taylor cannot show that his lawyer's omission prejudiced him. We agree with the circuit court's analysis rejecting this claim:

Ms. Ferguson's affidavit is not as interesting for what it says as it is for what it does not say. Ms. Ferguson does not state that she saw the victim injure herself when she jumped the fence. Because Ms. Ferguson does not attest to any personal knowledge as to how the victim sustained her injury ... there is no reasonable probability that her testimony would have materially benefitted the defense or that it would have changed the outcome of the trial.

(Emphasis added.) Taylor's claim of ineffective assistance of counsel based on the fact that his lawyer failed to subpoena Ferguson is unavailing.

¶7 Finally, Taylor argues that his trial lawyer should have called an unnamed witness at trial who was present when K.B. talked to his lawyer about her recantation and signed the notarized statement recanting her accusations. He argues that this witness could have testified about what K.B. said at the lawyer's office, thereby bolstering his defense that he was falsely accused. There are two problems with this argument. First, the argument is inadequately developed. A postconviction motion must allege facts that allow the reviewing court to meaningfully assess the defendant's claim. *State v. Allen*, 2004 WI 106, ¶21, 274 Wis. 2d 568, 682 N.W.2d 433. Taylor does not name this witness and does not explain what, specifically, the witness would have said. Second, Taylor does not explain how the unnamed witness's testimony about K.B.'s statements at the office would overcome a hearsay challenge. At best, the unnamed witness would have been able to testify only that he or she saw K.B. sign the affidavit. Therefore, we reject Taylor's claim that his lawyer rendered ineffective assistance by failing to call this witness at trial.

By the Court.—Judgment and order affirmed.

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

