COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2015AP1685-CR
2015AP1686-CR

Cir. Ct. Nos. 2013CF2709
2013CF3753

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JUSTIN D. WAKEFIELD,

DEFENDANT-APPELLANT.

APPEALS from judgments and an order of the circuit court for Milwaukee County: MEL FLANAGAN AND JEFFREY A. WAGNER, Judges. *Judgments and order affirmed*.

Before Kessler and Brash, JJ., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. Justin D. Wakefield appeals judgments convicting him of substantial battery, battery to a domestic abuse injunction petitioner, intimidation of a victim, violation of a domestic abuse injunction, and misdemeanor bail jumping, all as acts of domestic abuse and all as a repeater. He also appeals the circuit court's order denying his postconviction motion. He argues: (1) there was insufficient evidence to support the jury's verdict on the battery charges; (2) the circuit court erred in refusing to play a jail recording of a phone call he made to I.J., the victim, in its entirety; and (3) he is entitled to a new trial in the interest of justice. We affirm.

¶2 Wakefield first argues that there was insufficient evidence to support the jury's verdict as to the battery convictions. "Evidence is insufficient to support a conviction only if the evidence, when viewed most favorably to the State, 'is so [lacking] in probative value and force that it can be said as a matter of law that no [jury], acting reasonably, could have found guilt beyond a reasonable doubt.'" ***State v. Booker***, 2006 WI 79, ¶22, 292 Wis. 2d 43, 717 N.W.2d 676 (citation omitted). "If any possibility exists that the [jury] could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the [jury] should not have found guilt based on the evidence before it." ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Whether the evidence is sufficient to support the verdict is a question of law subject to independent review. ***Booker***, 292 Wis. 2d 43, ¶12.

¶3 Wakefield contends that the evidence was insufficient as a matter of law because I.J.'s trial testimony was inconsistent with her initial statement to police. I.J. testified at trial that Wakefield forced his way into her residence when

she opened the door. Police Officer Susan Stirmel, who took I.J.'s statement the day of the stabbing, testified that I.J. said she let Wakefield in to her apartment because she thought something was wrong with him.

¶4 The credibility of the witnesses and the weight of the evidence are matters for the jury's assessment. ***State v. Banks***, 2010 WI App 107, ¶46, 328 Wis. 2d 766, 790 N.W.2d 526. "[W]e must adopt all reasonable inferences which support the jury's verdict." ***Id.*** Internal inconsistencies in a witness's testimony do not render the testimony incredible as a matter of law. ***Id.***, ¶45. The jury decided that I.J.'s testimony about the attack was credible. Her testimony was corroborated by medical evidence, which showed that she needed eight stitches to seal the wounds to her hands, and by Officer Stirmel, who testified that when she interviewed I.J. at her home shortly after the attack, she saw "blood on the floor inside the residence, throughout the residence." While I.J. had differing explanations about why Wakefield was in her home, this issue was not probative of any element of any of the charged crimes and, even if it had been, it was the jury's task to decide what happened. I.J.'s inconsistent testimony did not render the evidence insufficient as a matter of law to support the verdict.

¶5 Wakefield next argues that the evidence was insufficient because I.J.'s testimony that she was bleeding "all over the place" after Wakefield repeatedly stabbed her was inconsistent with the crime scene photos. The photos, which were introduced as exhibits at trial, have not been included in the appellate record. Our review is limited to the record before us. *See* ***Austin v. Ford Motor Co.***, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). Where the record is

inadequate for us to assess the appellant's contention, we will assume that there is no error. *See* ***id.*** Wakefield's argument fails because he did not ensure that the photos were included in the record.

¶6 Moreover, assuming for the sake of argument that the crime scene photos do not show large or numerous pools of blood, Wakefield's argument is clearly without merit. The State introduced a dozen photos at trial showing blood in I.J.'s apartment, including in her hallway, by her bathroom, on the living room floor and walls, in the kitchen, on the stairs, and on the walls going up the stairs. Regardless of the amount of blood in each photo, the photos are consistent with I.J.'s testimony that she was bleeding "all over the place."

¶7 Wakefield next contends that the evidence was insufficient because I.J. presented conflicting testimony at trial about the location of her cell phone during the attack. Again, any minor inconsistencies in the testimony were an issue for the jury to decide. We reject Wakefield's argument that the evidence was insufficient to support the verdict as a matter of law.

¶8 Wakefield next argues that the circuit court erred in refusing to play the entire recording of a phone call he placed to I.J. while he was in jail. He argues that the circuit court's ruling violated WIS. STAT. § 901.07 (2013-14),[1] and prevented him from attacking I.J.'s credibility. Wakefield forfeited his right to make this argument because he did not object to the circuit court's ruling on the basis of § 901.07. *See* ***State v. Davis***, 199 Wis. 2d 513, 517, 545 N.W.2d 244 (Ct. App. 1996).

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶9 Even if Wakefield had objected, his argument would have been unavailing. WISCONSIN STAT. § 901.07 codifies the common law rule of completeness. *See* ***State v. Briggs***, 214 Wis. 2d 281, 292, 571 N.W.2d 881 (Ct. App. 1997). It provides that when a writing or recorded statement is introduced at trial, "an adverse party may require the party at that time to introduce any other part … which ought in fairness to be considered contemporaneously with it." Sec. 901.07. The State introduced portions of the recording to show that Wakefield was appealing to I.J.'s sympathies in an attempt to coerce her into recanting. Wakefield asked the circuit court to play the entire recording for the jury so that they could hear the casual interaction he had with I.J. during the rest of the conversation. The circuit court concluded that the material was not relevant. On appeal, Wakefield argues the entire recording should have been introduced to undermine the victim's credibility; I.J. would not have been discussing mundane matters with Wakefield if he had, in fact, stabbed her with a knife. Like the circuit court, we see no connection between I.J.'s routine conversation with Wakefield and the credibility of her claim that he attacked her with a knife months earlier. The circuit court's ruling was a proper exercise of discretion.

¶10 Finally, Wakefield argues that he is entitled to a new trial in the interest of justice. *See* WIS. STAT. § 752.35. As explained above, Wakefield's arguments are meritless. This case is not a close call. A new trial in the interest of justice is not warranted.

By the Court.—Judgments and order affirmed.

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