COURT OF APPEALS
DECISION
DATED AND RELEASED

October 4, 1995

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

NOTICE

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

No. 95-0052

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

DONALD E. STOETZEL,

Plaintiff-Appellant,

v.

CITY OF NEW BERLIN, MICHAEL HANRAHAN, BRIAN JOHNSON and KIMBERLY FRIESE,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Waukesha County: MARK S. GEMPELER, Judge. *Affirmed*.

Before Anderson, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Donald E. Stoetzel appeals pro se from a judgment following a jury trial dismissing his action against the City of New Berlin, its police chief Michael Hanrahan, and its police officers Brian Johnson and Kimberly Friese (collectively, the City). Stoetzel alleged that he was physically assaulted by officers Johnson and Friese during a traffic stop on April

3, 1991. The issues pertain to alleged trial errors and the use of a thirteen-person jury. We conclude that there was no error and affirm the judgment.

At the outset, we find Stoetzel's brief disorganized and incomprehensible. Pro se appellants in a civil action are bound by the same rules that apply to attorneys on appeal and must satisfy all procedural requirements. ***Waushara County v. Graf***, 166 Wis.2d 442, 452, 480 N.W.2d 16, 20, *cert. denied*, 506 U.S. ___, 113 S. Ct. 269 (1992). Stoetzel fails to meet the most basic requirements that his brief state the issues, provide facts necessary to understand them, and present an argument and reasons for the argument. *See* ***id.***; RULE 809.19, STATS. Further, Stoetzel presents no citations to legal authorities for his contentions.

While some leniency may be allowed, we do not have "a duty to walk *pro se* litigants through the procedural requirements or to point them to the proper substantive law." ***Graf***, 166 Wis.2d at 452, 480 N.W.2d at 20. Likewise, we are not required to sift through Stoetzel's brief to craft an argument for him. Rather, we will ignore much of the discussion of irrelevant facts in Stoetzel's brief and adopt the issues as framed by the City. Undoubtedly the City's experience with this litigation has enabled it to clarify Stoetzel's claims and provide us with an understanding of them.

At trial, Stoetzel was asked by his attorney how many times he had been convicted of a crime. Stoetzel answered twice and no further inquiry was made about prior convictions. Stoetzel argues that he was not allowed to tell the "whole truth" in answering questions about his prior convictions. Evidence that Stoetzel had been twice convicted of a crime was properly admitted pursuant to § 906.09, STATS. The trial court also properly precluded the City from exploring the nature of those prior convictions and other bad acts.

While Stoetzel's trial counsel did not elicit testimony from him about the nature of the prior convictions, Stoetzel cannot complain now. *See* ***State v. Ruud***, 41 Wis.2d 720, 726, 165 N.W.2d 153, 156 (1969) (a deliberate and knowing election between alternative courses of action as a matter of strategy does, in effect, estop the litigant from claiming error). For the same reasons, we need not consider Stoetzel's claim that the attorney he hired would not allow

him to subpoena any witnesses. Stoetzel had his choice of counsel and his opportunity to submit evidence.

Stoetzel contends that he was not provided adequate time to confer with his counsel about "very important matters." However, at the point in the trial to which Stoetzel cites, he and his attorney were permitted during the jury's lunch time to make a decision about whether rebuttal testimony would be offered. Adequate time was provided. Further, Stoetzel does not indicate what prejudice he might have suffered as a result of the alleged inadequate time period.

Next, Stoetzel argues that records of the emergency room physician who attended him were improperly admitted. The records were admitted pursuant to § 908.03(6m), STATS., along with other certified records from the hospital. The documents do not constitute unsworn testimony. Also, there was no objection to their admission. No error occurred.

Stoetzel also contends that § 756.096(3)(b), STATS., does not permit the utilization of a thirteen-person jury. Here, there was a stipulation to use a thirteen-person jury. It is well established that where a party has induced certain action by the trial court, he or she cannot later complain on appeal. ***Zindell v. Central Mut. Ins. Co.***, 222 Wis. 575, 582, 269 N.W. 327, 330 (1936). Even if there was error in using a thirteen-person jury, there was no prejudice. There were no dissenting jurors on the verdict.

Finally, Stoetzel's complaints about witnesses lying and the absence of documentary evidence to corroborate the police officers' testimony are cognizable as a challenge to the sufficiency of the evidence to support the jury's verdict. A jury verdict will be sustained if there is any credible evidence to support it. ***Radford v. J.J.B. Enters.,*** 163 Wis.2d 534, 543, 472 N.W.2d 790, 794 (Ct. App. 1991). The credibility of the witnesses and the weight afforded their individual testimony are left to the province of the jury. ***Fehring v. Republic Ins. Co.,*** 118 Wis.2d 299, 305, 347 N.W.2d 595, 598 (1984).

The jury concluded that neither officer used excessive force during Stoetzel's arrest. It answered the damages questions with zeros. The jury chose

to believe the police officers' testimony and rejected Stoetzel's version of the incident. The record here supports the jury's verdict.

By the Court.—Judgment affirmed.

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