COURT OF APPEALS
DECISION
DATED AND FILED

May 14, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1008-CR **Cir. Ct. No. 2010CF4313**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRIAN L. JACKSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI, Judge. *Affirmed*.

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

¶1 CURLEY, P.J. Brian L. Jackson appeals the judgment convicting him of being a felon in possession of a firearm as a repeat offender. *See* WIS.

STAT. §§ 941.29(2)(a) and 939.62(1)(b) (2009-10).[1] He also appeals the orders denying his postconviction motion and supplemental postconviction motion. Jackson argues: (1) there was insufficient evidence to support his conviction; (2) several alleged errors, which were not objected to at trial, constituted plain error; (3) the real controversy was not tried; and (4) the trial court erred in denying his postconviction motion without an evidentiary hearing. We reject his arguments and affirm.

BACKGROUND

¶2 Jackson was charged with possession of a firearm by a felon as a repeat offender. The criminal complaint alleged that on August 30, 2010, Milwaukee Police Officer Mladen Dukic heard gunshots and saw two masked men pointing handguns in the direction of a black SUV near 5311 West Center Street in Milwaukee. The SUV sped away, and the masked men fled. The complaint further alleged that Dukic chased the masked men on foot, and when the men split up in an alley and began running in different directions, Dukic pursued the man who ran eastbound. Dukic followed the eastbound man to 2651 North 52nd Street, where Dukic saw the man throw his hat, mask, and gun into some nearby bushes. The man, Jackson, was taken into custody; the gun, a .357 revolver, was recovered by police.

¶3 Jackson pled not guilty and the case went before a jury. The State elicited the testimony of Officer Dukic; his partner, Officer Michael Flannery; and a DNA analyst, Susie Odogba. Jackson did not testify.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 Officer Dukic was the State's primary witness. Dukic testified that on the evening of the incident he and Officer Flannery were on their way out of a building where they had been investigating a burglary when they heard gunshots. Once outside, Dukic saw two masked men who were armed with "objects that appeared to be handguns." The masked men took off at a run, at which point Dukic and Flannery began chasing them. Dukic testified that at one point he lost sight of the masked men because he came across a vehicle in an alley that was unoccupied and had its lights on and engine running. Dukic stopped to ensure that there were no armed individuals inside the vehicle, but then saw the masked men again and resumed chasing them. Shortly thereafter, the masked men split up and Dukic followed the man running eastbound. The man ran through a yard, and tripped and fell. Dukic saw him get up and was able to catch up to him. At this point, Dukic observed that the man's hat had fallen off, but that he still had what appeared to be a handgun in his right hand. When Officer Dukic reached the vicinity of 2651 North 52nd Street, he peeked his head around the corner of the house and saw the man making a throwing motion toward a bush. Subsequently, Jackson was found crouched next to a wall about ten feet from the bush, and was apprehended.

¶5 Dukic testified that police recovered a .357 revolver and mask from the bush near where Jackson was apprehended, and a hat on the ground. Dukic submitted the gun, hat, and mask for DNA testing. There was DNA on all three items; however, it was not Jackson's DNA. Dukic further testified that he conducted a pat down of Jackson, and in the process recovered a right-handed glove in Jackson's pocket that looked like it "was taken off in a hurry." Most of the fingers were inside out, and the glove "wasn't placed all the way in the pocket."

¶6 The jury found Jackson guilty and he was sentenced. Jackson filed a postconviction motion and a supplemental postconviction motion, both of which were denied. Jackson now appeals. Additional facts will be developed below as necessary.

ANALYSIS

¶7 Jackson makes numerous arguments on appeal. He argues: (1) there was insufficient evidence to support the conviction; (2) several alleged errors, which were not objected to at trial, constituted plain error; (3) the real controversy was not tried; and (4) the trial court erred in denying his postconviction motion without an evidentiary hearing. We discuss each argument in turn.

I. Sufficient evidence supports the conviction.

¶8 Jackson argues that there was insufficient evidence at trial for the jury to have concluded that he was a felon in possession of a firearm. The question of whether the evidence is sufficient to support a conviction is a question of law we review *de novo*. ***State v. Booker***, 2006 WI 79, ¶12, 292 Wis. 2d 43, 717 N.W.2d 676.

¶9 "The standard for determining whether sufficient evidence supports a finding of guilt [is] … well established." ***State v. Watkins***, 2002 WI 101, ¶67, 255 Wis. 2d 265, 647 N.W.2d 244. We cannot reverse a criminal conviction unless the evidence, viewed most favorably to the State and the conviction, "'is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.'" ***Booker***, 292 Wis. 2d 43, ¶22 (citing ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990)); *see also* ***Bautista v. State***, 53 Wis. 2d 218,

223, 191 N.W.2d 725 (1971). If any possibility exists that the jury could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, we may not overturn the verdict, even if we believe that the jury should not have found Jackson guilty. *See* ***Poellinger***, 153 Wis. 2d at 506-07.

¶10 Jackson argues that the evidence was insufficient to prove that he possessed the gun because: (a) his DNA was not found on the gun, the mask, or the hat found in the bushes; (b) Officer Dukic lost sight of the men he was chasing at various points during the pursuit; and (c) Dukic merely saw Jackson throw a "dark object" that he "wasn't 100 percent sure" was a gun into the bushes. Jackson further argues that the fact that he was found with a glove in his pocket—a fact that the prosecutor argued in closing may have explained why Jackson's DNA was not found on the gun—is "irrelevant" because Dukic did not recall seeing Jackson wearing gloves during the chase, and because there was no expert testimony regarding whether wearing gloves would have prevented Jackson's DNA from being transferred.

¶11 There is another view of the evidence, however, that would allow a rational trier of fact to find that Jackson did in fact possess the gun. *See* ***id.*** Officer Dukic testified that upon leaving a burglary investigation, he heard gunshots. Immediately thereafter, Dukic and his partner pursued two armed, masked men on foot. The two masked men split up during the chase, and Dukic pursued the man who went eastbound. As he pursued the eastbound man, Dukic saw what appeared to be a handgun in the man's right hand. Dukic testified that the armed man went around a house and made "a throwing motion toward the bush." Dukic identified Jackson as the person he saw running and making the throwing motion. Additionally, Officer Dukic testified that the only other individuals in the area at the time were juveniles who did not match the

description of the masked men. Likewise, Officer Dukic's partner, Officer Flannery, testified that Jackson fit the general description of the individuals he had originally observed with firearms, and no other individuals matching this description were in the area.

¶12 Moreover, while Officer Dukic was not completely sure about what was thrown in the bushes, he did recover a handgun in the bushes. When asked whether anything else was found in the area matching the general description of the object he saw thrown, Dukic replied, "I did use my flashlight and went under the bushes thinking there might be something else down there. I did not recover anything else, any other objects, other dark objects on the bottom of the bushes." Additionally, during a pat-down of Jackson, Dukic recovered a right-handed glove that appeared to have been taken off in a hurry because it was inside out and not all the way in Jackson's pocket. Dukic also testified that it had been a regular summer day and that he was wearing his short-sleeved uniform on the date of this incident.

¶13 The above testimony of Officers Dukic and Flannery was more than sufficient for a jury to conclude that Jackson did in fact possess the gun in question. Even though there are contrary inferences the jury could have drawn from the evidence, this does not mean that the jury could not have concluded that Jackson did in fact possess the gun. Viewing the evidence most favorably to the State and the conviction, as we are required to do, *see* ***Booker***, 292 Wis. 2d 43, ¶22, we cannot conclude that it "'is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt[,]'" *see* ***id.*** (citation omitted). Therefore, we cannot reverse his conviction. *See* ***id.***

II. There was no plain error.

¶14 Jackson presents several alleged errors, which were not objected to at trial, that he argues constitute plain error. Specifically, he discusses: (a) the prosecutor's "leading" questions and "improper" remarks during closing argument; (b) the trial court's decision to prohibit Officer Dukic from testifying about the DNA report; and (c) the jury instruction regarding possession and the lack of a jury instruction regarding identification.

¶15 Jackson must clear an extremely high hurdle to show that any of these issues warrant reversal because they were not objected to at trial. We review errors otherwise waived by a party's failure to object for "plain error." *See* ***State v. Jorgensen***, 2008 WI 60, ¶21, 310 Wis. 2d 138, 754 N.W.2d 77. "Plain error is error so fundamental that a new trial or other relief must be granted even though the action was not objected to at the time." ***Id.*** (citation and internal quotation marks omitted). The error must be both "'obvious and substantial,'" *see* ***id.*** (citation and internal quotation marks omitted), or "'grave,'" *see* ***Virgil v. State***, 84 Wis. 2d 166, 191, 267 N.W.2d 852 (1978) (citation and internal quotation marks omitted), and the rule is "reserved for cases where there is a likelihood that the [error] ... has denied a defendant a basic constitutional right," *see* ***State v. Sonnenberg***, 117 Wis. 2d 159, 178, 344 N.W.2d 95 (1984).

¶16 We must use the plain error doctrine sparingly, *see* ***Jorgensen***, 310 Wis. 2d 138, ¶21, because "[i]t is a fundamental principle of appellate review that issues must be preserved at the [trial] court," *see* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727. Issues that are not preserved "generally will not be considered on appeal." ***Id.*** Moreover, the waiver rule is not to be considered lightly; it "is not merely a technicality or a rule of convenience;"

rather, "it is an essential principle of the orderly administration of justice." ***Id.***, ¶11.

¶17 As our supreme court has explained:

> The waiver rule serves several important objectives. Raising issues at the trial court level allows the trial court to correct or avoid the alleged error in the first place, eliminating the need for appeal. It also gives both parties and the trial judge notice of the issue and a fair opportunity to address the objection. Furthermore, the waiver rule encourages attorneys to diligently prepare for and conduct trials. Finally, the rule prevents attorneys from "sandbagging" errors, or failing to object to an error for strategic reasons and later claiming that the error is grounds for reversal. For all of these reasons, the waiver rule is essential to the efficient and fair conduct of our adversary system of justice.

Id., ¶12 (internal citations omitted).

¶18 With these standards in mind, we turn to Jackson's alleged plain errors.

A. The prosecutor's "leading" questions and "improper" remarks during closing arguments were not plain error.

1. Leading questions on direct examination.

¶19 Jackson first complains about the "leading" questions asked by the prosecutor during Officer Dukic's direct examination. Although it is not entirely clear from Jackson's brief exactly which specific questions he believes are leading, we refer, based on Jackson's record citations, to the following exchanges:

> A: …. So with my weapon out, I peeked and I observed this individual running and making a throwing motion towards the bush.

> Q: And is the individual that you observed to be making that throwing motion around that corner, is that person in the court at this time?
>
> A: Yes, sir, he is.
>
> ….
>
> Q: And now the individual that you identified here in court, you said you observed him to throw and object?
>
> A: Yes, sir.
>
> Q: At that point were you able to see what that object was?
>
> A: At that point it appeared to be a handgun. But I wasn't completely sure until we took the subject into custody, and I observed a handgun under the bushes.
>
> ….
>
> Q: [This exhibit that I am showing you,] [t]hat's simply a close-up picture of the revolver, the item, that you found after the defendant was placed under arrest?
>
> A: Yes, sir.
>
> Q: And is that in the immediate area in which you observed the defendant toss the object?
>
> A: Yes, sir.
>
> ….
>
> Q: Now you said you believe it to be a dark object. Did you look in the other immediate area to see if there was anything else that matched that general description that could have been what the defendant discarded other than that?
>
> A: I did use my flashlight and went under the bushes thinking there might be something else down there. I did not recover anything else, any other objects, other dark objects on the bottom of the bushes.

¶20 According to Jackson, the prosecutor's questions during these exchanges constituted plain error because Officer Dukic's "actual testimony was

that he saw a throwing motion and did not know what was tossed," but "by the time the time the prosecutor had finished [asking questions], the officer's testimony of seeing a throwing motion morphed into seeing [Jackson] throwing a dark object." Jackson argues that in the absence of the testimony from these "leading" questions, "the record is completely devoid of any testimony" that he possessed a handgun.

¶21 Jackson does not, however, consider other portions of the record. Prior to the testimony that Jackson highlights, Officer Dukic explained that while investigating a burglary complaint, he heard gunshots and observed two masked individuals who were armed. The fact that the individuals were armed was not gleaned from leading questions. We refer to the following exchange:

> Q: You see these two individuals at the street corner. Did they remain at that street corner?
>
> A: No, sir.
>
> Q: Now what, if anything, did you observe them to do?
>
> A: Upon us yelling ["]stop right there Milwaukee police,["] the individuals slowly started walking eastbound and then started walking southbound on North 53rd Street.
>
> *Q: And what, if anything did you [do] upon observing them to start walking in that direction?*
>
> *A: I observed that both subjects were armed.*
>
> Q: And were you at that point able to determine what they were armed with?
>
> A: We were trained just to look at the hands. I observed objects that appeared to be handguns.

(Emphasis added.)

¶22 Thus, our review of the record shows that the prosecutor was not making impermissible inferences in framing follow-up questions, but was instead merely summarizing Dukic's earlier testimony. The questions that Jackson points to as plain error, therefore, do not constitute error "so fundamental that a new trial … must be granted even though the action was not objected to at the time." *See* ***Jorgensen***, 310 Wis. 2d 138, ¶21 (citation and internal quotation marks omitted).

2. Remarks during closing argument.

¶23 Jackson also argues that many of the prosecutor's remarks in closing argument constituted plain error.

¶24 First, Jackson argues that the portions of the prosecutor's argument "vouching" for Officer Dukic's credibility—in other words, portions in which the prosecutor gave "examples which in his opinion showed there was no reason for Officer Dukic to lie"—constituted plain error because they went outside the evidence. *See* ***United States v. Cornett***, 232 F.3d 570, 575 (7th Cir. 2000) ("Improper vouching occurs when a prosecutor expresses her personal opinion about the truthfulness of a witness or when she implies that facts not before the jury lend a witness credibility."). Jackson does not point to specific examples, but merely refers us to three pages in the record, presumably for us to figure out for ourselves, which portions were erroneous and why the alleged errors were "'obvious and substantial.'" *See* ***Jorgensen***, 310 Wis. 2d 138, ¶21 (citation omitted). Jackson's argument regarding this matter is not sufficiently developed and we will not consider it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (1992) (court of appeals may decline to review inadequately developed issues).

¶25 Second, Jackson argues that the prosecutor, by providing "his personal opinion on the mechanics/operation" of the gun that Jackson was alleged to have possessed, went outside the evidence, which was plain error. As the State points out, however, the prosecutor's comments about the mechanics of the gun—which we italicize below—were part of a broader discussion of the evidence in its entirety:

> Just to be clear, as I've already told you what the parties say [in closing argument] is not evidence. You're supposed to consider the instructions you've been given and what you saw here. *That being said, just one thing to correct, this is a [.]357 revolver. Knowledge of a firearm would indicate that a revolver like this would not send the casings out when you shoot it out. It's not a semiautomatic hand[gun] in which casings are actually ejected when you shoot it, rather the spent casing remains inside the revolver. When you are done with it you spin it and get all the old casings out.*
>
> That's not the point of this case though…. [T]he point of this case is[,] is whether or not you believe that Officer Dukic saw this individual throw this object, the object he later identified as the revolver, into the yard. That's the question you're here to answer.

(Emphasis added.)

¶26 Jackson does not explain exactly what is prejudicial about the discussion of the gun. *See* ***id.*** Moreover, the prosecutor's comments make clear that the extraneous information about the .357 was *not* the focus of the jury's mission. *See* ***State v. Draize***, 88 Wis. 2d 445, 454, 276 N.W.2d 784 (1979) ("The line between permissible and impermissible argument is … drawn where the prosecutor goes beyond reasoning from the evidence to a conclusion of guilt and instead suggests that the jury arrive at a verdict by considering factors other than the evidence."). The comments about the gun were not plain error.

¶27 Third, Jackson argues that the prosecutor: (1) improperly "reminded" the jury of the fact that in addition to the .357 revolver, a 9-mm handgun was found near the place where he was apprehended; and (2) improperly directed the jury to consider that when Jackson was searched upon arrest, a right-handed glove was found in his pocket. Jackson argues that the prosecutor's discussion of these facts constituted plain error because "[b]oth the glove and the 9[-]mm were irrelevant to the question of whether Mr. Jackson actually possessed the .357 revolver."

¶28 Again, we discern no error. As to the 9-mm handgun, Jackson does not dispute the fact that a 9-mm handgun was found near the place where he was apprehended, nor does he argue that the State ever tried to link him to the 9-mm gun. Indeed, as the State notes, and as Jackson does not dispute, the officers who testified about the 9-mm implied that that particular gun was possessed by the second masked man. As for the glove, Jackson does not dispute that a right-handed glove was found in his pocket upon arrest. While Jackson does not believe that the glove was relevant, it was the jury's role to decide what weight to give to the facts before them, and the prosecutor did not err by arguing that certain facts supported a guilty verdict.[2] *See* ***State v. Burns***, 2011 WI 22, ¶48, 332 Wis. 2d 730, 798 N.W.2d 166 ("A 'prosecutor may comment on the evidence, detail the evidence, argue from it to a conclusion and state that the evidence convinces him and should convince the jurors.'") (citation omitted). Jackson's differing opinion on the relevance and strength of the evidence does not meet the standard of plain error. *See* ***Jorgensen***, 310 Wis. 2d 138, ¶21.

[2] It is the province of the trial court to determine what is relevant.

¶29 Fourth, Jackson argues that the prosecutor's "dismissive treatment" of the DNA evidence "misled" the jury. During closing argument, the prosecutor argued that this is not a case where the DNA evidence would be blood, semen, or saliva. The prosecutor argued that if Jackson was wearing the glove found in his pocket while holding the gun, his DNA may not transfer to the gun. Jackson does little more in his brief than state that the prosecutor's arguments were "improper." *See* ***Pettit***, 171 Wis. 2d at 646. He therefore does not meet the extremely high burden required to show plain error. *See* ***Jorgensen***, 310 Wis. 2d 138, ¶21.

3. Combined effect of alleged errors.

¶30 Finally, though his brief is not entirely clear on this point, Jackson appears to argue that the aggregation of the above alleged errors, combined with the trial court's ruling that Officer Dukic could not testify about the DNA report, which Dukic did not prepare, and the fact that there was no jury instruction on identification, constitutes plain error. Jackson's argument regarding these matters is conclusory at best. *See* ***Pettit***, 171 Wis. 2d at 646. Moreover, as our courts have so often stated, adding together numerous failed arguments does not create one successful one. "Zero plus zero equals zero." *See*, *e.g.*, ***Mentek v. State***, 71 Wis. 2d 799, 809, 238 N.W.2d 752 (1976). We reject Jackson's argument.

B. The trial court's decision to prohibit Officer Dukic from testifying about the DNA report was not plain error.

¶31 Jackson next argues that the trial court's decision to prohibit Officer Dukic from testifying about the DNA report was plain error because the decision violated his Sixth Amendment rights to confrontation and to present a defense. According to Jackson, the trial court should have allowed him to cross-examine Dukic about the contents of the report because doing so "might have brought the

jury's focus to the identification issue"—namely, that Jackson's DNA was not on the hat, mask or gun found near where Jackson was apprehended.

¶32 At trial, defense counsel attempted to cross-examine Officer Dukic about the DNA report that excluded Jackson from the items found in the bush. Dukic testified that he saw the report for the first time at trial, and that he did not know the findings of the DNA analyst. When asked about DNA taken from the gun that was recovered near Jackson, Dukic testified that he did not know if any DNA was found on it.

¶33 The prosecutor objected to Dukic's further testifying about the contents of the report, and the trial court responded after a sidebar that it was sustaining the objection and terminating this line of questioning. The trial court explained:

> [Trial counsel] was attempting to introduce evidence about the DNA testing [through Officer Dukic]. The State objected.
>
> We discussed at sidebar that, in my view, it's better and more appropriate that testimony come in from the DNA analys[t], that's the person that may or may not be available for tomorrow. So I cut off the line of questioning for today. If the DNA examiner is available tomorrow, I think that's a better way to discuss that issue. If the DNA expert is not available tomorrow, I told both sides I might allow [trial counsel] to recall this officer and might be able to get it under a records exception. That's not my ruling. That's just a possibility.

¶34 Thereafter, the DNA analyst, Susie Odogba, testified about the lack of Jackson's DNA on the gun, mask, and hat.

¶35 The trial court's decision to prohibit Officer Dukic from testifying about a report he did not prepare and the contents of which he had no personal

knowledge, was not plain error, particularly in light of the fact that another witness did testify to the report's contents. Jackson does not explain what evidence he wanted to introduce through Office Dukic that was not introduced through the analyst. Indeed, as the State notes, by trying to introduce the DNA report through an officer who did not analyze the data, Jackson risked creating a confrontation clause violation. *Cf.* ***State v. Williams***, 2002 WI 58, ¶¶9, 20-31, 253 Wis. 2d 99, 644 N.W.2d 919 ("[T]he presence and availability for cross-examination of a highly qualified witness, who is familiar with the procedures at hand, supervises or reviews the work of the testing analyst, and renders her own expert opinion is sufficient to protect a defendant's right to confrontation."). Jackson's argument is conclusory and underdeveloped, and we will not consider it. *See* ***Pettit***, 171 Wis. 2d at 646.

C. Neither the jury instruction regarding possession nor the lack of a jury instruction regarding identification constitutes plain error.

¶36 Jackson next argues that the inclusion of the optional paragraphs in the "possession" instruction, *see* WIS JI—CRIMINAL 1343 (2011), and the omission of the "identification" instruction, *see* WIS JI—CRIMINAL 141 (2012), from the jury instructions constituted plain error. He claims that because the possession instruction included the statement that "possession may be shared with another person," and because there were two guns—the .357 and the 9-mm—found near where he was apprehended, the jury was "misled and likely confused" by the instruction. Jackson further argues that the absence of the identification instruction "compounded" the jury's likely confusion because the State did not prove identity beyond a reasonable doubt.

¶37 Jackson's issue, however, is not with the instructions, but with the evidence; it would seem from his brief that he is again arguing that the evidence

was insufficient to support the conviction. Moreover, regarding the effect of the possession instruction, we again note that the State never tried to link him to the 9-mm gun. Rather, as the State notes, and as Jackson does not dispute, the officers who testified about the 9-mm implied that this particular gun was possessed by the second masked man, not Jackson.

¶38 As Jackson himself notes in his brief, the jury instructions in this case were presented to the trial court without objection. *See* WIS. STAT. § 805.13(3) (requiring counsel object to proposed jury instructions at the instruction and verdict conference or be deemed to have waived any error in the proposed instructions). Moreover, Jackson's attempt to re-argue the sufficiency of the evidence by alleging error with the jury instructions does not establish "not only that an error exists but also that that error is so plain or fundamental as to affect" his "substantial rights." *See* ***State v. Paulson***, 106 Wis. 2d 96, 105-06, 315 N.W.2d 350 (1982) (applying plain error doctrine to alleged jury instruction errors). There was no plain error.

III. The real controversy was fully tried.

¶39 Jackson also argues that the real controversy was not fully tried. *See* WIS. STAT. § 752.35. Jackson claims that the prosecutor went outside the evidence during closing arguments and asked leading questions, and again argues that the evidence was insufficient to convict him. His arguments, however, are nothing more than conclusory restatements of arguments that we already addressed above. "The power to grant a new trial in the interest of justice is to be exercised 'infrequently and judiciously[,]'" and should be "exercised only in 'exceptional cases.'" ***State v. Avery***, 2013 WI 13, ¶38, 345 Wis. 2d 407, 826 N.W.2d 60 (citation omitted). This is not an exceptional case. For all of the

reasons already discussed, we reject Jackson's arguments and conclude that the real controversy was fully tried.

IV. The trial court did not err in denying Jackson's postconviction motion without a ***Machner*** *hearing.*

¶40 Finally, Jackson argues that the trial court erred by denying his postconviction motion regarding whether trial counsel was ineffective without a hearing. *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). Jackson's argument regarding this issue consists of a single paragraph and faults the trial court simply for denying the motion without a hearing. Jackson does not, however, allege facts showing that he was entitled to a hearing. *See* ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433 (defendant must allege facts sufficient to entitle him to relief; conclusory allegations will not suffice). Therefore, we must reject his arguments, and affirm the trial court's decision.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.