COURT OF APPEALS
DECISION
DATED AND FILED

May 5, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1383-CR **Cir. Ct. No. 2013CF213**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RODNEY JIMIE HOPKINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID A. HANSHER and TIMOTHY M. WITKOWIAK, Judges.[1] *Affirmed.*

Before Curley, P.J., Brennan, J., and Thomas Cane, Reserve Judge.

[1] The Honorable David A. Hansher entered the judgment of conviction. The Honorable Timothy M. Witkowiak entered the order denying postconviction relief.

¶1 PER CURIAM. Rodney Jimie Hopkins, *pro se*, appeals a judgment convicting him of second-degree recklessly endangering safety, with use of a dangerous weapon, and an order denying his postconviction motion. He argues that: (1) there was insufficient evidence to support the conviction; (2) the complaint contained false statements from various witnesses; (3) that his trial lawyer should have raised the defense of involuntary intoxication on his behalf; (4) he should not have been convicted because he acted in self-defense; and (5) his sentence should be vacated because the circuit court erred when it determined that he was ineligible for the Substance Abuse Program in prison. We affirm.

¶2 Hopkins first argues that there was insufficient evidence to support his conviction. We will not "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." ***State v. Hughes***, 2011 WI App 87, ¶10, 334 Wis. 2d 445, 799 N.W.2d 504 (citations and internal quotation marks omitted). "Reasonable inferences drawn from the evidence can support a finding of fact and, if more than one reasonable inference can be drawn from the evidence, we must adopt the inference that supports the verdict." ***Id.***

¶3 A defendant is guilty of second-degree recklessly endangering safety if the State presents evidence that shows beyond a reasonable doubt that the defendant: (1) endangered the safety of another person; and (2) endangered the person by criminally reckless conduct. WIS JI—CRIMINAL 1347 (2009). "Criminally reckless conduct" is conduct that creates "a risk of death or great bodily harm to another person," the risk is substantial and unreasonable, and the defendant was aware that his conduct created the risk of harm. ***Id.*** A defendant is

guilty of committing a crime with use of a dangerous weapon if the State proves beyond a reasonable doubt that the defendant used a dangerous weapon in the commission of the crime. WIS JI—CRIMINAL 990 (2006).

¶4 The evidence adduced at trial showed that Hopkins pulled a knife out on a bus and threatened another passenger, Deivory Allen, who had been assisting two women passengers who were being harassed by Hopkins. Shakur Bates testified that she was riding the bus with her sister when Hopkins began to bother her. Bates testified that Hopkins kept insisting that she take a brown paper bag from him that he said contained $4000. She refused because she did not know him, and he became more aggressive and loud, until a stranger, Allen, stepped in to help. Bates testified that Hopkins tried to hit Allen. Allen restrained him and then forced him to get off the bus. Bates testified that Hopkins then came back on the bus behind a woman who was boarding, pulled out a knife and started swinging it at Allen.

¶5 Kayla Williams, Bates' sister, also testified that a stranger, who she identified in court as Hopkins, was bothering her and her sister while they were riding the bus. He kept asking them to take a brown bag that he said had money in it. Williams testified that Allen, another stranger, stepped in to help them. Williams testified that Allen forced Hopkins from the bus, but Hopkins turned around and came after Allen with a knife in his hand.

¶6 Allen testified that he noticed two young women on the bus who appeared to be distressed by an older man, who Allen identified as Hopkins. Allen testified that he approached the women to ask whether Hopkins was bothering them. When they said he was, he asked Hopkins to leave the women alone. Hopkins became angry and told Allen that it was none of his business. Allen

testified that Hopkins then got out of his seat and tried to grab Allen by his coat. Allen held him down in a seat and told him he would let him go if he would get off the bus. Allen testified that Hopkins appeared to get off when the bus stopped, but then Allen saw him coming toward him, swinging a knife. Allen testified that Hopkins swiped at him and took several jabs at him before fleeing.

¶7 Hopkins testified that he was simply flirting with the two women. He admitted pulling a knife on Allen, but testified that he did so in self-defense.

¶8 As the trier of fact, the trial court was the arbiter of witness credibility. *See* ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 (citation omitted). The circuit court chose to believe the testimony of Bates, Williams and Allen, rather than the testimony of Hopkins. The testimony of Bates, Williams and Allen was sufficient to support the conviction because it showed that Hopkins was swinging a knife at Allen on a public bus.

¶9 Hopkins next argues that he is entitled to redress because the criminal complaint contained false information from the witnesses and omitted important circumstances of the altercation, citing ***Franks v. Delaware***, 438 U.S. 154 (1978), and ***State v. Mann***, 123 Wis. 2d 375, 367 N.W.2d 209 (1985).

¶10 A defendant who alleges that the complaint contains false statements or material omissions may be entitled to a hearing to determine whether, if the false statements are omitted or the material omissions included, the complaint still shows probable cause. ***Id.*** However, a defendant's claim that a complaint lacks probable cause must be raised before trial because any deficiency in the sufficiency of the complaint is cured by a trial at which a defendant has been found guilty beyond a reasonable doubt. *Cf.* ***State v. Webb***, 160 Wis. 2d 622, 467

N.W. 2d 108 (1991). Moreover, the omissions in the witness statements about which Hopkins complains do not undercut the circuit court's probable cause finding. We reject this argument.

¶11 Hopkins next argues that his trial lawyer provided him with constitutionally ineffective assistance because he did not raise the defense of involuntary intoxication at trial. To establish ineffective assistance of counsel, a defendant must show that his lawyer's performance was deficient and that he was prejudiced by the deficient performance. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).

¶12 Hopkins contends that he was taking medicines for his health problems that might have caused him to become intoxicated involuntarily. Hopkins does not support this argument with anything other than broad assertions; he does not explain which medicines he took on the day the crime was committed and does not assert that the medicines, in fact, impaired his judgment. We will not consider issues that are not adequately argued. *See* ***Roehl v. American Family Mut. Ins. Co.***, 222 Wis. 2d 136, 149, 585 N.W.2d 893 (Ct. App. 1998).

¶13 To the extent Hopkins is casting this argument as a claim that he received ineffective assistance of counsel because his lawyer did not raise this issue, his claim fails. To prevail, Hopkins would have to show that the defense of involuntary intoxication would have been more successful than the defense his trial lawyer presented, which was to minimize the seriousness of the altercation and paint Hopkins as the victim. *See* ***State v. Starks***, 2013 WI 69, ¶6, 349 Wis. 2d 274, 833 N.W. 2d 146 (a defendant must show that the unraised claims he contends his lawyer should have raised were clearly stronger than the claims his lawyer raised on appeal). Hopkins wholly failed to address how the involuntary

intoxication defense he contends should have been raised would have been stronger than the defense his lawyer presented. Therefore, we reject this argument.

¶14 Hopkins next argues that he should not have been convicted because he acted in self-defense when he brandished the knife. As we previously explained, "[w]hen the circuit court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness's testimony." ***Peppertree Resort Villas***, 257 Wis. 2d 421, ¶19. Although Hopkins testified that he acted in self-defense, the circuit court stated that it did not believe him. The circuit court stated that it found the State's witnesses to be extremely credible and found Hopkins' version of what happened not credible. Because this credibility call was the circuit court's decision to make in its role as trier of fact, we reject Hopkins's claim that he should not have been convicted because he acted in self-defense.

¶15 Finally, Hopkins argues that his sentence should be vacated because the circuit court incorrectly believed that he was ineligible for the Substance Abuse Program in prison because he was too old. *See* WIS. STAT. § 302.05 (2013-14).[2] The circuit court sentenced Hopkins to five years of initial confinement and eighteen months of extended supervision. During sentencing, the circuit court stated that Hopkins would not be eligible for either Boot Camp, also known as the Challenge Incarceration Program, or the Substance Abuse Program because he was "way too old" and "[f]orty is the maximum age." In fact, there is

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

an age restriction for the Challenge Incarceration Program, but there is no maximum age for the Substance Abuse Program.

¶16 We agree with the State that "[i]t is clear from the whole sentencing record that the circuit court did not intend to find Hopkins eligible for any special programming." To the contrary, immediately after the circuit court said that Hopkins was too old for the Substance Abuse Program, it stated: "You've been to prison before and had your chances with different programs in prison." The circuit court noted that Hopkins had *fifty* prior convictions and said that Hopkins needed to be incarcerated to address his strong need for rehabilitation, to be punished and to protect the public. Because the circuit court's erroneous statement that Hopkins was too old for the substance abuse treatment had no impact on the sentence imposed, the error was harmless. Therefore, Hopkins is not entitled to resentencing.

By the Court.—Judgment and order affirmed.

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