COURT OF APPEALS
DECISION
DATED AND FILED

June 28, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2975-CR **Cir. Ct. No. 2011CF792**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ADEMUS AKADEAMEUER SAECHAO,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marathon County: MICHAEL MORAN, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Ademus Saechao appeals a judgment of conviction and an order denying his motion for postconviction relief. Saechao argues the circuit court erroneously exercised its discretion by disqualifying his first trial

counsel. He further argues his second trial counsel provided ineffective assistance. We disagree and affirm the judgment and order.

BACKGROUND

¶2 Saechao was charged with one count of armed robbery with threat of force; two counts of armed burglary with a dangerous weapon; two counts of theft of movable property with special facts; and two counts of false imprisonment, all as a party to a crime. According to the criminal complaint and the incorporated police reports, on August 2, 2011, Saechao, Manuel Alonso-Bermudez,[1] and Joseph Rohmeyer carried out a robbery at the victims' residence. Alonso-Bermudez knew one of the victims kept numerous guns at the residence.

¶3 Saechao drove Alonso-Bermudez and Rohmeyer in a Chrysler to a location near the victims' residence and dropped them off. Alonso-Bermudez and Rohmeyer proceeded through the woods to the residence, during which time Alonso-Bermudez repeatedly called Saechao to let him know their location. Alonso-Bermudez used a cell phone belonging to Harley Schultz to make those calls.

¶4 Upon entering the residence, Alonso-Bermudez held the victims at gunpoint while Rohmeyer tied the victims' hands behind their backs with vacuum cleaner cords. Alonso-Bermudez then handed Rohmeyer the gun. Rohmeyer stayed with the victims while Alonso-Bermudez searched the residence and garage

[1] Manuel Alonso-Bermudez is also referred to in the record as having the last name Alonso-Bermudas, Alonso, Bermudez, and Bermudas.

for guns. Alonso-Bermudez called Saechao to drive the Chrysler to the residence. They then loaded "a bunch of guns" into the trunk and left.

¶5 Saechao retained attorney Jay Kronenwetter to represent him. After Saechao retained Kronenwetter, the state public defender's office—unaware Kronenwetter was representing Saechao—appointed Kronenwetter to represent Alonso-Bermudez in a case involving the same charges[2] and in another case involving a robbery of a Hardee's. Kronenwetter was entered as the attorney of record for Alonso-Bermudez before being entered as the attorney of record for Saechao.

¶6 At Saechao's preliminary hearing, Kronenwetter informed the circuit court that he was making a special appearance for Saechao as "the potential for future conflicts with existing clients [was] too great for [him] to continue after this stage in the proceedings." The preliminary hearing was held in part, but the court granted a continuance due to one of the victims not receiving a subpoena. At the close of the hearing, Kronenwetter informed the court that the public defender's office would be evaluating Saechao to determine whether he was eligible for public defender representation.

¶7 Before the continued preliminary hearing, a separate hearing was held on December 6, 2011, to address the circuit court's concerns about Kronenwetter representing both Saechao and Alonso-Bermudez. Kronenwetter, apparently deciding to continue as Saechao's counsel, indicated the public

[2] Saechao and Alonso-Bermudez were not charged in the same criminal complaint and their cases proceeded on separate trial tracks. It is undisputed, however, that Saechao and Alonso-Bermudez were codefendants and were both charged for the same allegations related to the August 2011 robbery.

defender's office had expressed concern over potential future conflicts; however, he stated he was "satisfied that no current conflict exists" and potential future conflicts were "highly unlikely." He also indicated both clients had expressed a strong interest in having him remain as their counsel, and he did not believe a written waiver of a conflict was necessary from either client at that point. He further stated he did not believe he could adequately address with his clients all potential future conflicts at that point in order to get an informed waiver. The court expressed great concern about Kronenwetter's continued representation of "codefendants in a case, charged with the same charges," but it did not require him to withdraw from Saechao's case.[3] The court, however, stated, "If this has to come up again, I will address it again, if there is a greater concern."

¶8 On January 5, 2012, Kronenwetter withdrew from Alonso-Bermudez's cases. Attorney John Bachman was appointed as successor counsel for Alonso-Bermudez.

¶9 The jury trial in Saechao's case was scheduled for April 11, 2012. During an April 3, 2012 motion hearing, the State raised concerns about Kronenwetter's past representation of Alonso-Bermudez, as Alonso-Bermudez was on the State's witness list. The State clarified it was not asking the circuit court to remove Kronenwetter but rather wanted the court to conduct a colloquy with Alonso-Bermudez and Saechao in accordance with SCR 20:1.9.[4]

[3] The State did not take a position either way during the hearing, although it remarked that "there is a very likely possibility that at trial, one of these defendants would be called against the other."

[4] Supreme Court Rule 20:1.9, in relevant part, provides:

(continued)

Kronenwetter responded that there was no conflict or a potential for conflict should he have to cross-examine Alonso-Bermudez. The court asked the parties to submit case law regarding the issue.

¶10 The parties reconvened before the circuit court on April 6, 2012. The State, Kronenwetter, Saechao, Bachman, and Alonso-Bermudez appeared at the hearing. The State had responded to the circuit court's request for case law in a letter. Saechao did not provide the court with any case law. Bachman indicated Alonso-Bermudez was willing to waive, in writing, any conflicts as to Saechao's case but not the case involving the Hardee's robbery. Bachman further explained,

> If we go ahead with [Saechao's] trial and Mr. Alonso[-Bermudez] testifies, there may be a problem because Mr. Kronenwetter would probably try to impeach Mr. Alonso[-Bermudez] with things that he wouldn't otherwise have been privy to. So I think there is a real danger there.

> **Duties to former clients. (a)** A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in a writing signed by the client.
>
> ....
>
> **(c)** A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
>
> (1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the information has become generally known; or
>
> (2) reveal information relating to the representation except as these rules would permit or require with respect to a client.

> But even knowing that, Mr. Alonso[-Bermudez] still has the same position. Based on my understanding of the ethics rules, I don't see how Mr. Kronenwetter can go ahead. But that's for the court to decide.

¶11 After additional arguments from the parties, the circuit court disqualified Kronenwetter from representing Saechao.[5] The court's decision was based on Alonso-Bermudez's refusal to provide a complete waiver, the "issue of potential conflict of interest," and the "significant ethical issues" in the case "that hamper" Kronenwetter's ability to represent Saechao. Kronenwetter asked the court for guidance on what information he could provide successor counsel, as he did not believe he could pass along his work product given the court's ruling. The court agreed and directed Kronenwetter to forward only the discovery obtained from the State to Saechao's successor counsel. The court also adjourned the jury trial.

¶12 Despite the circuit court's April 6, 2012 ruling, Kronenwetter filed a notice of appearance for Saechao dated April 9, 2012. A letter from Bachman was attached to the notice. The letter indicated Alonso-Bermudez was now willing to waive in writing any attorney-client conflict he may have with Kronenwetter for both of the cases to which Kronenwetter had previously been appointed.

¶13 The circuit court addressed Kronenwetter's notice at an April 11, 2012 hearing. The court questioned whether a waiver from Alonso-Bermudez would be valid, particularly given that Alonso-Bermudez had since decided to fire Bachman. The court also reaffirmed its April 6, 2012 ruling disqualifying

[5] Although the circuit court disqualified Kronenwetter under its "inherent authority," the State had requested during the hearing that the court "consider" disqualifying Kronenwetter based on its review of the case law and given "the nature of the conflict and the prior representation[.]"

Kronenwetter, this time concluding Kronenwetter's representation of Saechao presented both an actual conflict and a serious potential for conflict of interest. The court indicated it would be willing to revisit the issue of whether some of the information Kronenwetter had obtained could be provided to successor counsel, including reports that were generated by investigators. Kronenwetter responded that there were no investigator reports.[6]

¶14 Attorney Sharon Gisselman was then appointed to represent Saechao, and the case ultimately proceeded to a two-day jury trial. During the trial, Gisselman employed what Saechao describes as a "general burden of proof strategy." The State called Rohmeyer and Schultz to testify, and both implicated Saechao in the August 2011 robbery and related offenses. Schultz also testified that he stored the stolen guns and that Saechao would periodically pick up a few of the guns to sell or trade. Alonso-Bermudez was not called as a witness, and Saechao did not testify or call any witnesses. The jury found Saechao guilty of all seven counts as charged in the complaint. The circuit court imposed concurrent sentences totaling thirteen years' initial confinement and ten years' extended supervision.[7]

¶15 Saechao filed a motion for postconviction relief, arguing the circuit court should not have forced Kronenwetter to withdraw and Gisselman was

[6] Kronenwetter testified at the postconviction motion hearing that he undertook an investigation in the case, which included interviewing people, and he conducted most of the interviews himself.

[7] At Saechao's request, Gisselman moved to withdraw as his attorney prior to his sentencing, and another attorney was appointed.

ineffective.[8] After a ***Machner***[9] hearing at which Kronenwetter, Gisselman, and Saechao testified, and subsequent briefing, the circuit court concluded its disqualification of Kronenwetter was correct "based upon a finding of actual or serious potential conflict of interest[.]" The court also denied Saechao's postconviction motion as to his ineffective-assistance-of-counsel claim.

DISCUSSION

I. The circuit court's disqualification of Kronenwetter

¶16 On appeal, Saechao again argues the circuit court should not have required Kronenwetter to withdraw. "Whether disqualification of an attorney is required in a particular case involves an exercise of the circuit court's discretion. Because the circuit court's decision is a discretionary one, we review the court's ruling to determine whether it was erroneous." ***State v. Peterson***, 2008 WI App 140, ¶14, 314 Wis. 2d 192, 757 N.W.2d 834 (citation omitted). A court properly exercises its discretion when it applies the correct legal standard to the relevant facts and reaches a reasonable result using a rational process. ***State v. Medina***, 2006 WI App 76, ¶24, 292 Wis. 2d 453, 713 N.W.2d 172.

¶17 Saechao claims the circuit court violated his constitutional right to the counsel of his choice when the court disqualified Kronenwetter. He acknowledges SCR 20:1.9 provides that a former client must give written consent

[8] Saechao also argued that the judgment should be reversed because Rohmeyer and Schultz were given favorable, undisclosed plea deals by the State. However, Saechao withdrew the argument during the postconviction proceedings before the circuit court's ruling. He does not raise it again on appeal.

[9] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

for the attorney to represent the current client. However, he contends such written consent is only required if the interests of the current and former clients are "materially adverse" and argues that such adversity was questionable in this case. According to Saechao, the potential conflict of interest relied upon by the court in disqualifying Kronenwetter was "utterly speculative," as "[t]here was never a serious indication that [Alonso-]Bermudez was going to be used by the State against Saechao, or that Saechao could be used in a case against [Alonso-] Bermudez due to Rohmeyer and Schultz." Although he acknowledges the court's removal of Kronenwetter was "essentially a *sua sponte* decision," he suggests the State instigated Kronenwetter's removal because it "simply did not want to battle against a unique and vigorous defense." Saechao claims, "It is almost as if the prosecutor chose to have a vanilla defender instead of a creative defender such as Attorney Kronenwetter."

¶18 The Sixth Amendment to the United States Constitution, in relevant part, provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." U.S. CONST. amend. VI. "[A]n element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him." ***United States v. Gonzalez-Lopez***, 548 U.S. 140, 144 (2006). An erroneous deprivation of the right to counsel of choice is a structural error. ***Id.*** at 150.

¶19 However, the right is not absolute. *See* ***Wheat v. United States***, 486 U.S. 153, 159 (1988). While courts must recognize a presumption in favor of an accused's choice of counsel, *see* ***id.*** at 164, a "circuit court may, in its discretion, disqualify counsel of a criminal accused, even over the accused's objection and proffered waiver of the right to conflict-free representation, when an actual or a serious potential for conflict of interest exists," ***State v. Miller***, 160 Wis. 2d 646,

650, 467 N.W.2d 118 (1991). "An actual conflict or serious potential for conflict of interest imperils the accused's right to adequate representation and jeopardizes the integrity of the adversarial trial process and the prospect of a fair trial with a just, reliable result." ***Id.*** at 653. The evaluation of the facts and circumstances of each case are left primarily to the informed judgment of the circuit court. ***Wheat***, 486 U.S. at 164. However, in exercising its discretion, a circuit court should be alert to the possibility that the State may seek to manufacture a conflict and carefully explore this issue on the record. ***Miller***, 160 Wis. 2d at 654.

¶20 Here, the circuit court disqualified Kronenwetter based on Alonso-Bermudez's refusal to provide a complete waiver, the potential for a conflict of interest, and the significant ethical issues arising from Kronenwetter's representation of Alonso-Bermudez. The court explained,

> You are an experienced attorney, Mr. Kronenwetter, and I know how trials go, because I have done trials. In the future there could be significant potentially-adverse positions taken, including plea negotiations, as well as trial strategy. That's where the court's concern is; very much the court's concern.
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> Halfway through trial, Mr. Saechao ... may decide to say that Mr. [Alonso-]Bermudez ... is the one who did that, and he didn't, and that could occur the other way. There may be a desire to work out something in this case, or the ability, and it hampers—my potential concern is it hampers your ability to negotiate or to put on defenses or to put on cases without being fettered, and I use the word fettered, by your previous representation of Mr. [Alonso-]Bermudez.
>
> This court has—the purpose of this court is to have a fair and effective administration of justice, and this court's concern is that Mr. Saechao and Mr. [Alonso-]Bermudez have a fair trial. That's this court's concern; fairness, impartiality, and justice. That's what this court is all about. If some of the parties, or one of the parties, or the attorney for one of the parties, does not have the ability, potentially because of ethical issues or ethical restraints, to do that, then this court has great concern.

The court also observed the case was "ripe with appellate issues[,]" and it was "not going to create a situation where this case is going to be tried twice because of these ethical issues."

¶21 When the circuit court was later presented with information to suggest Alonso-Bermudez was willing to provide a complete waiver, the court not only questioned whether the waiver would be valid but further concluded an actual conflict and serious potential for conflict existed.[10] The court reaffirmed its previous decision, while emphasizing it was not taking the decision "lightly" and it had "looked at this from many different perspectives in a way to see if there was a possible way of Mr. Kronenwetter to continue on this case."

¶22 At the postconviction motion hearing, the circuit court further elaborated on the conflicts as it saw them. In particular, the court identified six grounds, which it believed justified its exercise of discretion, although the court noted the list was not exhaustive. First, the court stated that there was not a valid waiver. Second, the court explained that the State had named Alonso-Bermudez

[10] As to the actual conflict, the circuit court explained,

> Second of all, I am not convinced any waiver we were to do in this case would not require the disclosure of confidential information in order for a waiver to be a valid waiver which would require information to be received by Mr. Saechao from a confidential attorney relationship with Mr. [Alonso-]Bermudez and Mr. [Alonso-]Bermudez's waiver would not require some type of a disclosure of confidential information that was received from Mr. Saechao.
>
> That is a grave concern and I think that creates the actual conflict in this case that would—I think the damage is done as far as the issue of whether we can proceed having you represent both of them.

as a witness, and if he was called to testify, Kronenwetter would have had to cross-examine him, which could implicate privileged client matters.[11]

¶23 Third, the court indicated the case was charged as a conspiracy and regardless of Kronenwetter's unique trial strategy, he could not avoid the possibility at some stage in the trial of implicating Alonso-Bermudez, his former client, as a member of the conspiracy. The court added that trials are fluid and Saechao should be allowed to have a fair trial without his attorney "handcuffed or set with only one trial strategy."

¶24 Fourth, the court reiterated that Alonso-Bermudez and Saechao "are codefendants; same facts, same parties, same alleged conspiracy, same case." The court explained any representation of Alonso-Bermudez or Saechao could require the disclosure of confidential information obtained from each of them. The court also observed that each codefendant had different interests and each wanted to be acquitted; offers could be made before, after, or during trial in exchange for their cooperation. The court further explained Kronenwetter had already acknowledged that if consideration were given to Alonso-Bermudez to testify, a conflict would

[11] Saechao argues there was never any serious indication that the State was going to use Alonso-Bermudez against Saechao or use Saechao in the case against Alonso-Bermudez due to Rohmeyer's and Schultz's cooperation, and a conflict never came to fruition because Alonso-Bermudez did not testify. He therefore claims the conflict was on the "speculative," not the "sufficiently strong," side of the spectrum. Saechao's position in this respect, however, relies on the benefit of hindsight. Here, the circuit court was confronted with having to decide whether Kronenwetter should be disqualified based on an actual conflict or serious potential conflict of interest in the "murkier" pretrial context, during which the "likelihood and dimensions of nascent conflicts of interest are notoriously hard to predict[.]" *See* ***Wheat v. United States***, 486 U.S. 153, 162 (1988). As the State argues, had Rohmeyer decided not to cooperate on the day of trial or had problems arisen during his testimony, Alonso-Bermudez's testimony would have been necessary because Alonso-Bermudez had information about Saechao's involvement known only to him, Saechao, and Rohmeyer.

certainly exist. The court did not want to create a situation where "the trial blows up and becomes a mistrial because of a conflict."

¶25 Fifth, citing SCR 20:3.7(a),[12] the court noted Kronenwetter acted as the sole investigator when he collected information for the case and he therefore would have difficulty impeaching a witness that he interviewed. Finally, the court explained the jury instructions mentioned Alonso-Bermudez, and if Kronenwetter were to pursue his proposed strategy of arguing someone other than Saechao was driving the vehicle, *see infra* ¶¶33-34, he would still have to implicate Alonso-Bermudez as part of the conspiracy either through cross-examination or evidence. The court further commented that a conflict would continue into the sentencing hearing if Saechao were convicted.[13]

¶26 As to Saechao's claim that the State instigated Kronenwetter's disqualification, during the postconviction motion hearing, the circuit court stated:

> Counsel alludes to the fact that a motion was made by the [S]tate to remove. However, I believe the record is clear

[12] Supreme Court Rule 20:3.7(a) provides:

> A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
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> (1) the testimony relates to an uncontested issue;
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> (2) the testimony relates to the nature and value of legal services rendered in the case; or
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> (3) disqualification of the lawyer would work substantial hardship on the client.

[13] During the postconviction motion hearing, Kronenwetter acknowledged the potential for a conflict at sentencing. For example, a conflict could arise if Kronenwetter sought to argue at sentencing that Saechao was less culpable than Alonso-Bermudez. *See* ***Wheat***, 486 U.S. at 160 (quoting ***Holloway v. Arkansas***, 435 U.S. 475, 489-90 (1978)).

> that every court that presided over this case was concerned about the potential for conflict.
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> This court was prepared to address the issue regardless of whose motion it was, who made the motion, given the history of the previous hearings.

These statements are consistent with the court's declaration during the April 6, 2012 hearing that it was acting under its inherent authority when it disqualified Kronenwetter. Saechao appears to recognize as much on appeal in stating the court sua sponte ordered Kronenwetter's removal.[14]

¶27 A circuit court has wide latitude in balancing the right to counsel of choice against the needs of fairness. ***Gonzalez-Lopez***, 548 U.S. at 152 (citing ***Wheat***, 486 U.S. at 163-64). Here, the circuit court determined the actual or serious potential conflict of interest arising from Kronenwetter's previous representation of Alonso-Bermudez necessitated Kronenwetter's disqualification. The court fully articulated its concerns on the record and identified the particular conflicts in the case as it saw them. On the record before us, we conclude the

[14] Saechao also appears to argue that the circuit court erroneously exercised its discretion when it sua sponte disqualified Kronenwetter. His claim relies in part on language in ***State v. Peterson***, 2008 WI App 140, ¶23, 314 Wis. 2d 192, 757 N.W.2d 834, in which we stated, "A sua sponte disqualification inquiry presents a palpable risk of unfairly denying a party the right to retain counsel of his or her choosing." ***Peterson***, however, is distinguishable. In ***Peterson***, we concluded the circuit court improperly disqualified a retained postconviction attorney from representing a defendant in a ***Machner*** hearing. ***Peterson***, 314 Wis. 2d 192, ¶24. The defendant's postconviction attorney was a former law partner of the defendant's trial attorney. ***Id.***, ¶4. The circuit court disqualified the postconviction attorney on the grounds that there was an appearance of a conflict of interest relating to the acrimonious dissolution of the law partnership. ***Id.*** However, the circuit court did not explain what problem it anticipated would occur if the postconviction attorney continued, it did not describe any potential ethical violations that might arise, and it did not engage in a dialogue with the defendant before disqualifying the attorney. ***Id.***, ¶23. Here, the circuit court was not confronted with a conflict between two former law partners but rather was confronted with a classic conflict of interest situation arising from Kronenwetter's representation of codefendants. Moreover, unlike in ***Peterson***, here the court made a well-reasoned decision and articulated the problems it felt could arise.

circuit court properly exercised its discretion in removing Kronenwetter as counsel for Saechao.

¶28 Saechao argues in his reply brief that the circuit court also erred by not conducting the inquiry required under cases such as ***State v. Kaye***, 106 Wis. 2d 1, 315 N.W.2d 337 (1982), *overruled on other grounds by* ***Miller***, 160 Wis. 2d at 660, as specifically tailored in WIS JI—CRIMINAL SM-45 (2000). Since this argument is raised for the first time in his reply brief, we decline to consider it. *See* ***Swartwout v. Bilsie***, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981) (we generally do not consider arguments raised for the first time in a reply brief).

¶29 Saechao also argues Kronenwetter's file should not have been "suppressed." However, he does not cite any legal authority to support this claim, and his argument is undeveloped. He does not address how the circuit court erroneously exercised its discretion in suppressing the file, and, in fact, he concedes it was ostensibly done to protect the potential interests of Alonso-Bermudez. We therefore decline to consider this argument. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not address undeveloped arguments or arguments unsupported by references to legal authority).

II. Saechao's ineffective-assistance-of-counsel claim

¶30 Saechao also again argues Gisselman failed to provide him effective assistance. Whether a criminal defendant received ineffective assistance of counsel is a mixed question of law and fact. ***State v. Pitsch***, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985). We will uphold the circuit court's findings of fact unless those findings are clearly erroneous. ***Id.*** at 634. However, whether

those facts meet the legal standard for ineffective assistance of counsel is a question of law that we review de novo. *See* ***id.***

¶31 An ineffective assistance of counsel claim involves a two-part inquiry. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). First, the defendant must show that counsel's performance was deficient. ***Id.*** Second, the defendant must show that the deficient performance prejudiced the defense. ***Id.*** "To demonstrate deficient performance, the defendant must show that his counsel's representation 'fell below an objective standard of reasonableness' considering all the circumstances." ***State v. Carter***, 2010 WI 40, ¶22, 324 Wis. 2d 640, 782 N.W.2d 695 (quoting ***Strickland***, 466 U.S. at 688). In evaluating counsel's performance, we must be "highly deferential" and "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." ***Strickland***, 466 U.S. at 689. We also must make every effort to avoid the distorting effects of hindsight and evaluate the conduct from counsel's perspective at the time. ***Id.***

¶32 To demonstrate prejudice, the defendant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.*** at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** If the defendant fails to make a sufficient showing on one component, we are not required to address the other component. ***Id.*** at 697.

¶33 Saechao's primary argument is that Gisselman was ineffective for pursuing a "simple burden of proof defense" instead of Kronenwetter's defense strategy, which was to implicate Xue Lee as the driver. Kronenwetter testified during the postconviction hearing that Lee was involved in interstate drug

trafficking. He also had reason to believe Lee was involved in gun trafficking. His strategy, therefore, was to show that: the Chrysler and the phone used in the commission of the offenses were both linked to Lee; Saechao and Lee resided together; Lee was involved in a drug trafficking conspiracy; and Lee, not Saechao, was the one involved in the robbery.

¶34 When Kronenwetter was asked how he planned to elicit the information to pursue this defense, he explained he would have asked the law enforcement officers who were involved in the investigation about drug trafficking materials related to Lee that had been seized. He stated he had "no doubt" Rohmeyer would admit to knowing Lee.[15] He also planned to call Lee as a witness. The record of Kronenwetter's testimony does not reflect that Lee ever admitted to participating in the robbery as the driver. However, Kronenwetter did explain that his interviews with Lee confirmed that "[Lee] was involved in interstate drug trafficking, that he had intimate knowledge of the alleged robbery, and that he didn't seem to mind talking about it." According to Kronenwetter, Lee already had talked to officers about trying to have his car—the Chrysler used in the robbery—returned. Kronenwetter explained that "it didn't strike [him] as a high likelihood that [Lee] would plead the Fifth were he produced as a witness." To the contrary, Kronenwetter believed, "it seemed very likely that [Lee] would try to explain himself[,]" and Lee could explain what happened to the stolen guns.

¶35 During the postconviction hearing, Gisselman confirmed that her strategy was to try to create as much reasonable doubt as she could. When asked

[15] Rohmeyer denied knowing Lee when Gisselman asked Rohmeyer about Lee on cross-examination.

about Kronenwetter's strategy, Gisselman testified, "[H]e's in fantasy land." She explained Kronenwetter was talking about "what he would have done because he wasn't faced with the evidence that the State put on in this particular trial." She also questioned whether some of the information Kronenwetter planned to reveal would be relevant. Additionally, according to Gisselman, Lee was no longer around, and Saechao could not give her any information about his location. Saechao fails to show how Gisselman's trial strategy fell outside the wide range of reasonable professional assistance given the circumstances in this case. Therefore, her performance was not deficient.

¶36 Saechao also argues Gisselman was ineffective for talking him out of testifying. However, the record belies his argument. During the postconviction hearing, Saechao explained that the reason he did not testify during the trial was because he had "just lost hope" and "just obviously gave up." Moreover, during the jury trial, the circuit court engaged in a colloquy with Saechao, during which Saechao confirmed it was his decision not to testify. Saechao does not challenge the adequacy of the colloquy. The circuit court further found during its postconviction oral ruling that there was no evidence to support the argument that Gisselman talked Saechao out of testifying at trial. We therefore conclude Gisselman was not deficient for "talk[ing]" Saechao out of testifying, as he claims.

¶37 Finally, under the heading "Other Failures of Attorney Gisselman," Saechao lists, in less than half a page, five remaining instances in which he claims Gisselman was ineffective. He characterizes these instances as "opportunities for the defense [that] were dropped." However, the record belies three of the instances claimed: Gisselman did emphasize that no fingerprint evidence linked Saechao to the offenses; she did elicit testimony that Saechao owned several cars; and she did elicit testimony that two other people, neither of which was Saechao,

activated the phone used in the crimes and another individual had been identified as using that phone number. We agree with the State that Saechao's arguments regarding the remaining two claimed errors are undeveloped. *See* ***Pettit***, 171 Wis. 2d at 646-47 (undeveloped arguments will not be considered). Saechao did not respond to the State's argument in this regard, and therefore we deem the State's argument conceded. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded).

By the Court.—Judgment and order affirmed.

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