COURT OF APPEALS
DECISION
DATED AND FILED

March 14, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2410-CR **Cir. Ct. No. 2013CF3169**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSE A. ADAMES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JONATHAN D. WATTS, Judge. *Affirmed*.

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

¶1 PER CURIAM. Jose A. Adames appeals a judgment convicting him of one count of first-degree sexual assault, one count of false imprisonment, and two counts of armed robbery, all as a party to a crime. He also appeals the circuit court's order denying his postconviction motion. Adames argues that he

received ineffective assistance of counsel when his trial lawyer failed to object to testimony from a Sexual Assault Nurse Examiner (SANE) who treated B.G.-T., one of the victims, and failed to object to police testimony about heroin found in the home of Julio Quiles-Guzman, one of his co-defendants. Adames also argues that the circuit court erred in denying his postconviction motion without a hearing. We affirm.

¶2 Adames, Quiles-Guzman, and Omar Rivera broke into the home of H.S. and B.G.-T., who were watching television with their four-year-old son, and terrorized them for five hours. Adames hit H.S. in the head with a gun. Adames, Guiles-Guzman and Rivera, who were all armed and wearing masks, then tied up H.S., placed duct tape over his eyes, and took him and the child up to the attic.

¶3 Adames and the other men sexually assaulted B.G.-T. repeatedly and forced her to drive to the bank to withdraw money for them two times, once before midnight and once after midnight, because the bank had limits on how much money B.G.-T. could withdraw from her bank account daily. The men told B.G.-T. at gunpoint to help them load her possessions into her car, including social security cards, electronics and DVDs. Adames and the other men left B.G.-T. tied to a chair and drove away with her car loaded with the stolen items. B.G.-T. escaped, freed H.S. and their child, and fled to the neighbor's house for help.

¶4 At the jury trial, Rivera testified against Adames and Quiles-Guzman. His testimony was consistent with the testimony of H.S. and B.G.-T. The prosecutor also introduced DNA evidence linking the men to the crimes. The jury convicted the men.

¶5 A defendant claiming ineffective assistance of counsel must show both that his lawyer performed deficiently and that the deficient performance

prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To establish deficient performance, "a defendant must show specific acts or omissions of counsel that were 'outside the wide range of professionally competent assistance.'" ***State v. Nielsen***, 2001 WI App 192, ¶12, 247 Wis. 2d 466, 634 N.W.2d 325 (citation omitted). To demonstrate prejudice, a "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Strickland***, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Nielsen***, 247 Wis. 2d 466, ¶13. If a court concludes that the defendant has not proven one prong of the ***Strickland*** test, it need not address the other prong. *See* ***Strickland***, 466 U.S. at 697. Whether a lawyer's actions are deficient and whether the defendant was prejudiced by his lawyer's deficient actions are questions of law. ***Nielsen***, 247 Wis. 2d 466, ¶14.

¶6 Adames first argues that his lawyer provided him with constitutionally ineffective assistance by failing to object to testimony from the nurse who treated B.G.-T. at the hospital after the assault. Acknowledging that much of the nurse's testimony was admissible as an exception to the hearsay rule for statements made for the purpose of medical diagnosis or treatment, *see* WIS. STAT. § 908.03(4) (2015-16),[1] Adames contends that the nurse's testimony "about the perpetrators wanting money, taking [B.G.-T.] to an ATM machine at the bank and having them load items into her car" should not have been admitted because they were not statements made for the purpose of medical diagnosis or treatment.

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶7 Adames' argument is unavailing. Even if Adames' lawyer had made a hearsay objection that the court sustained—an issue we do not decide—Adames' claim of ineffective assistance of counsel would fail because Adames cannot show that he was prejudiced. We agree with the circuit court's analysis on this point:

> The evidence against the defendant was simply overwhelming. [H.S.] identified all three men in the line-ups, and [B.G.-T.] identified Omar Rivera's voice. She also identified the defendant in court. The testimony of the victims and Omar Rivera's testimony were consistent and were further supported by forensic evidence such as the stolen items located at Rivera's and Quiles-Guzman's residences and the burned-out car. Finally, the Y-STR DNA evidence consistent with the defendant was located where [B.G.-T.] stated that he ejaculated, and Quiles-Guzman was determined to be a major contributor of DNA located in her vaginal and anal area [B.G.-T.'s] credibility was not attacked, nor was her testimony in conflict with anyone else's. If [the nurse's] testimony about [B.G.-T.'s] statement bolstered [B.G.-T.'s] testimony, its influence was minimal.

We conclude that there is no reasonable probability that the jury would have reached a different conclusion if it had not heard the nurse's testimony that Adames challenges.

¶8 Adames next argues that his lawyer provided him with constitutionally ineffective assistance by failing to object to Detective Scott Schmitz's trial testimony about suspected heroin that he found in Quiles-Guzman's residence. Adames contends this evidence was irrelevant and unduly prejudicial. *See* WIS. STAT. §§ 904.01 & 904.03.

¶9 Again, we agree with the circuit court's analysis that Adames cannot show that he was prejudiced by Detective Schmitz's testimony about the heroin found in Quiles-Guzman's home based on the overwhelming evidence against him: "[T]he jury was aware that the defendant was not being charged with a drug

offense and, considering the weight of the evidence against the defendant, the court cannot find that there is a reasonable probability that the jury would have reached a different conclusion had it not heard testimony that heroin was located *in someone else's home*."

¶10 Adames next argues that the cumulative effect of his lawyer's errors undermines confidence in the outcome of the trial and, therefore, establishes that he was prejudiced. *See* ***Strickland***, 466 U.S. at 698 (to demonstrate prejudice, a defendant must show that there is a reasonable probability—that is, a probability sufficient to undermine confidence in the outcome—that, but for counsel's errors, the result of the proceeding would have been different). ***Strickland***, 466 U.S. at 694. Considered together, Adames' lawyer's alleged errors have no more import than they did individually. They do not undermine our confidence in the verdict.

¶11 Finally, Adames argues that the circuit court erred in denying his postconviction motion without a hearing. *See* ***State v. Bentley***, 201 Wis. 2d 303, 309, 548 N.W.2d 50 (1996) (a defendant is entitled to an evidentiary hearing if he or she alleges sufficient facts that, if proven true, would entitle him/her to relief). Adames was not entitled to an evidentiary hearing because he is not entitled to relief as a matter of law.

By the Court.—Judgment and order affirmed.

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