COURT OF APPEALS
DECISION
DATED AND FILED

July 20, 2017

Diane M. Fremgen
Clerk of Court of Appeals

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Appeal No. 2014AP2721-CR **Cir. Ct. No. 2012CF1429**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDREI R. BYRD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: RICHARD T. WERNER, Judge. *Affirmed*.

Before Higginbotham, Sherman and Blanchard, JJ.

¶1 HIGGINBOTHAM, J. While he was attending a house party in Rockford, Illinois, Andrei Byrd engaged in conduct that led to his arrest by local police on a charge of assault under Illinois criminal law. Before the Illinois arrest, Byrd had been released from custody in Rock County, Wisconsin, pending

disposition on two felonies allegedly committed in Rock County. Based on Byrd's Illinois conduct, he was charged in this Rock County case with four counts of felony bail jumping for allegedly violating two conditions of his Rock County bonds. More specifically, for each pending Rock County felony, he was charged with one count of bail jumping for committing a new crime (through the conduct that led to his Illinois arrest) and one count of bail jumping for leaving Rock County. At trial, the jury found Byrd guilty on all four counts of felony bail jumping.

¶2 On appeal, Byrd challenges the two bail jumping convictions based on the allegation that Byrd committed a new crime. Specifically, Byrd contends that the circuit court erred in instructing the jury using Wisconsin's definitions of disorderly conduct and attempted battery to define the new crime. Separately, Byrd contends that there was insufficient evidence that he committed new crimes. In addition, Byrd argues that he received the ineffective assistance of trial counsel, in three respects, which we summarize below. For the following reasons, we affirm.

BACKGROUND

¶3 The following facts are not contested. In October 2011, Byrd had a bail hearing in Rock County circuit court on two felony cases, the nature of which do not matter to any issue raised on appeal. He was released with bond conditions in each case, which included conditions that Byrd not leave Rock County and that he not commit any new crime.

¶4 The conditions in the two Rock County bonds were in effect in May 2012, when Byrd was arrested by local police at a house party in Rockford,

Illinois, on suspicion of assault, contrary to 38 ILL. COMP. STAT. ANN. 5/12-1 (2012) ("Illinois assault"),[1] based on the following allegations.

¶5 A Rockford police officer was dispatched to a house in Rockford. The host of the house party told the officer that she needed Byrd removed from her house because he was drunk and acting foolish. The officer heard yelling in the kitchen, and when he went to the kitchen he observed Byrd and B.H. arguing in a manner that involved "a lot of shouting and yelling." The officer "separated" Byrd and B.H. "to keep them from fighting further." The officer observed Byrd move quickly towards B.H., while raising his right hand above his head, bringing his hand near her face, which caused her to "move[] backward" in a "defensive posture." Byrd was taken into custody based on the officer's observations.

¶6 After Byrd was arrested in Illinois, he was charged in this Rock County case with four counts of felony bail jumping. As stated above, for each of the two underlying felonies Byrd was charged with violating two conditions of bond: that he not leave Rock County and that he not commit any new crimes.

¶7 At trial, after the State rested its case, but before the jury instruction conference, Byrd's counsel moved to dismiss the two "new crimes" counts. Counsel argued, first, that the State was required to prove that Byrd's new crime was that he committed Illinois assault, as defined by Illinois law, and, second, that the State had failed to produce evidence sufficient to prove Illinois assault. To these arguments trial counsel added a related contention that is difficult for us to

[1] The Illinois statute reads in pertinent part: "Sec. 12-1. Assault. (a) A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery …."

track, but to the apparent effect that the State had, moreover, failed to prove that Byrd had committed *any* crime recognized in Illinois law.

¶8 The court rejected Byrd's motion to dismiss the two "new crime" counts, effectively ruling that the pertinent legal standards for determining whether Byrd committed a new crime are found in the Wisconsin jury instructions for either disorderly conduct or attempted battery, and impliedly ruling that the State had introduced sufficient evidence to create a jury question as to whether Byrd's conduct constituted either Wisconsin disorderly conduct or Wisconsin attempted battery.

¶9 At the jury instruction conference, the court noted Byrd's position that the jury should be instructed based on Illinois substantive criminal law, and not Wisconsin substantive criminal law, regarding the two "new crime" charges, and ruled that it would use Wisconsin substantive law. Thus, the jury was instructed using the Wisconsin substantive law, and asked to decide whether the State proved conduct amounting to Wisconsin disorderly conduct and Wisconsin attempted battery.[2]

[2] We observe that, while the parties make no note of these facts, the transcript of the instruction as given to the jury reflects use of the word "and" between the two offenses, and not "or," and the written instructions also use the word "and," not "or." The court's use of "and" was apparently inadvertent. The court informed the parties during the jury instruction conference, we think correctly, that the State should have been required to prove only that Byrd committed disorderly conduct *or* attempted battery to establish a bail jumping violation for each underlying crime, not both. However, even if Byrd had raised this issue on appeal, it would not be a problem for the State, because when a jury instruction erroneously requires the State to prove *more* than is necessary, we may analyze the erroneous jury instructions according to the harmless error standard, which would apply on this point. *See* ***State v. Beamon***, 2013 WI 47, ¶25, 347 Wis. 2d 559, 830 N.W.2d 681.

¶10 The jury found Byrd guilty on all four counts. Byrd filed a postconviction motion arguing that the circuit court improperly instructed the jury using Wisconsin substantive law to define the two "new crime" charges instead of instructions for Illinois assault, and that his trial attorney provided ineffective assistance. The circuit court held a ***Machner***[3] hearing, at which Byrd and his trial counsel testified, and denied Byrd's postconviction motion. Byrd appeals.

DISCUSSION

I. *Use of Wisconsin Disorderly Conduct and Attempted Battery Jury Instructions*

¶11 Byrd argues that the circuit court should have instructed the jury on the "new crime" bail jumping charges using Illinois substantive criminal law, specifically, using the instructions for Illinois assault, and not Wisconsin's versions of disorderly conduct and attempted battery, because "common sense and logic dictate[] [the use of] the jury instruction from the state where the alleged new crime took place." However, the State was not obligated to use Illinois assault as the measuring stick for a new crime; that was merely the charge lodged by the arresting officer. And, when the State points out that there is no difference that could matter between Wisconsin and Illinois law in defining the criminal offenses of disorderly conduct and attempted battery, Byrd has no response, conceding the issue. Thus, Byrd concedes that any error, if it occurred, was harmless. We affirm for these reasons.

¶12 We review de novo the question of whether jury instructions accurately state the applicable law. ***State v. Beamon***, 2013 WI 47, ¶¶18-20, 347

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

Wis. 2d 559, 830 N.W.2d 681. "Where jury instructions do not accurately state the controlling law, we will examine the erroneous instructions under the standard for harmless error, which presents a question of law for our independent review." ***Id.***, ¶19.

¶13 Harmless error analysis determines whether the error "affected the substantial rights of the party." ***Martindale v. Ripp***, 2001 WI 113, ¶30, 246 Wis. 2d 67, 629 N.W.2d 698. An error affects the substantial rights of a party when there is "a reasonable possibility that the error contributed to the outcome of the action." ***Id.***, ¶32. An error is harmless when it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." ***State v. Harris***, 2008 WI 15, ¶43, 307 Wis. 2d 555, 745 N.W.2d 397 (quoted source omitted).

¶14 Byrd contests the two "new crime" bail jumping convictions, on the ground that the jury was improperly instructed on one of the elements of bail jumping. To prove felony bail jumping, the State must prove that the defendant: (1) was charged with a felony, (2) was released from custody on bond, and (3) intentionally failed to comply with a condition of the bond. WIS JI—CRIMINAL 1795 (2010); WIS. STAT. § 946.49(1)(b) (2015-16).[4] Byrd's challenge focuses on the third element. On this element, the court instructed the jury that the State was required to prove that Byrd committed the crimes of disorderly conduct "and" attempted battery, as defined by Wisconsin law.

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

¶15 With that background, we now explain why we conclude that Byrd's briefing on the instruction topic appears to rest on a false premise. As Byrd did at least in part in the circuit court, on appeal he repeatedly refers to Illinois assault as the alleged "new crime," apparently operating from the incorrect premise that, because he was arrested on suspicion of Illinois assault, the State had to prove that the "new crime" he committed met the elements of Illinois assault. This premise is wrong, because it attributes significance to the label used by the arresting officer. The State may prosecute a defendant for bail jumping based on criminal conduct, whether the conduct occurred in Wisconsin or elsewhere, so long as the evidence establishes that the defendant's *conduct* constituted a crime. *See* ***State v. West***, 181 Wis. 2d 792, 796, 512 N.W.2d 207 (Ct. App. 1993) (new crime in the context of the offense of bail jumping broadly defined to include "an offense against the social order ... that is dealt with by community action rather than by an individual or kinship group") (quoted source omitted); *see also* ***State v. Hauk***, 2002 WI App 226, ¶¶14-19, 257 Wis. 2d 579, 652 N.W.2d 393 (proving "new crime" for bail jumping purposes does not require proof of a criminal conviction for the new conduct; the question is whether defendant engaged in criminal activity). While neither case addresses the precise issue here, ***West*** and ***Hauk*** make clear that it would not matter, under Wisconsin bail jumping law, how the Illinois police officer who arrested Byrd decided to label Byrd's conduct.

¶16 Having explained the flaw in Byrd's argument regarding Illinois assault, we turn to an argument by the State, conceded by Byrd, that involves other Illinois substantive criminal law, namely, the Illinois versions of disorderly conduct and attempted battery. The State argues in part that the laws of Wisconsin and Illinois defining the offenses of disorderly conduct and attempted battery are so similar that, even if it was error to use Wisconsin law, this error was harmless.

Compare WIS. STAT. § 947.01 and WIS JI—CRIMINAL 1900 (2010) (Wisconsin statute and jury instruction for disorderly conduct) *with* 38 ILL. COMP. STAT. ANN. 5/26-1(a)(1) and IL JI—19.07 (Illinois statute and jury instruction for disorderly conduct) and *compare* WIS. STAT. §§ 939.32(1); 940.19(1) and WIS JI—CRIMINAL 580; WIS JI—CRIMINAL 1220 (Wisconsin statutes and jury instruction for attempted battery) *with* 38 Ill. Comp. Stat. Ann. 5/8-4(a); 5/12-3(a) and IL JI—6.05; IL JI—11.05 (Illinois statutes and jury instruction for attempted battery). We see no evident weakness in the State's detailed comparison of the statutes.

¶17 And, faced with this supported harmless argument by the State, Byrd implicitly concedes it by failing to respond to it. That is, in his reply brief, Byrd does not respond to the State's argument that the result would have been the same if the court instructed the jury on the Illinois crimes of disorderly conduct and attempted battery, and thus, he concedes it. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). Instead of addressing the argument as presented, Byrd's reply brief changes the subject to Illinois assault, which as we have explained is not pertinent to the analysis.

II. *Sufficiency of the Evidence*

¶18 Byrd briefly argues that the evidence was not sufficient to support convictions on the two "new crime" counts. This argument is without merit for the following reasons.

¶19 In reviewing a challenge to the sufficiency of the evidence to support a conviction, we may not substitute our judgment for that of the trier of fact; instead, the question is whether the evidence, viewed most favorably to the verdict, is so lacking in probative force and value that no trier of fact, acting

reasonably, could have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Whether the evidence is sufficient to support the conviction is a question of law that we review de novo. ***State v. Booker***, 2006 WI 79, ¶12, 292 Wis. 2d 43, 717 N.W.2d 676.

¶20 Again, Byrd misses the target by arguing that the evidence was insufficient to prove that he committed Illinois assault. We have explained why it is a nonstarter for Byrd to focus on the jury instruction for Illinois assault. For that reason, we reject this argument.

¶21 Byrd adds a one-paragraph alternative argument that the evidence was insufficient to support the allegations of disorderly conduct or attempted battery under Wisconsin law. Byrd argues that there was insufficient evidence to prove Wisconsin disorderly conduct because no witness testified that his behavior was disorderly. However, our summary of the officer's testimony above plainly provides sufficient evidence that Byrd's behavior was disorderly, considering the location of the conduct, the parties involved, and the manner of the conduct. This is so because the testimony provided a basis for the jury to find that Byrd disturbed persons attending a house party, that the officer needed to separate Byrd and B.H. during a loud argument, and that Byrd acted as if he were going to strike B.H. in the presence of the officer. *See* ***State v. Schwebke***, 2002 WI 55, ¶¶30-32, 253 Wis. 2d 1, 644 N.W.2d 666 (conduct at issue, in light of the circumstances, did not merely tend to annoy or cause personal discomfort in another, but threatened to disrupt peace and good order in the community).

¶22 In this same one-paragraph argument, Byrd separately argues that the State could not prove Wisconsin attempted battery as a new crime because it did not prove that his threatening conduct toward B.H. was done without her

consent. However, as stated above, the officer testified that Byrd's conduct caused B.H. to "move[] backward very quickly" in a "defensive posture." One entirely reasonable inference from this testimony could have been that B.H did not consent to Byrd's apparent attempt to batter her. This testimony provides a sufficient basis for the jury to infer that B.H. did not consent to Byrd's conduct.

¶23 In sum, the officer's testimony provided sufficient evidence to sustain Byrd's convictions for felony bail jumping on the "new crime" counts.

III. *Ineffective Assistance of Counsel*

¶24 Byrd argues that his defense counsel was ineffective in three ways: (1) counsel should have moved for a mistrial because the jury was effectively allowed to consider inadmissible "other acts" evidence, namely, the State referred in opening statement to a separate incident underlying a fifth count of bail jumping charged against Byrd, which was ultimately dismissed for lack of evidence; (2) counsel failed to take appropriate steps to avoid the State presenting testimony regarding one of Byrd's bond conditions that was not the subject of the charged offense, and regarding the underlying offense; and (3) counsel should have sought to establish a necessity defense, which counsel could have accomplished through more effective questioning of the host of the party, who was called to testify by Byrd. We address and reject each argument in turn.

¶25 To succeed on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's representation was deficient and that the deficiency prejudiced the defendant. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Both deficient performance and prejudice present mixed questions of fact and law. ***State v. Jeannie M.P.***, 2005 WI App 183, ¶6, 286 Wis. 2d 721, 703 N.W.2d 694. We uphold the circuit court's factual findings unless clearly

erroneous. ***State v. Thiel***, 2003 WI 111, ¶21, 264 Wis. 2d 571, 665 N.W.2d 305. However, we review de novo whether counsel's performance was deficient or prejudicial. ***Jeannie M.P.***, 286 Wis. 2d 721, ¶6.

¶26 An attorney's performance is deficient only if the defendant proves that the attorney's challenged acts or omissions were objectively unreasonable under all the circumstances of the case. *See* ***Kimbrough***, 2001 WI App 138, ¶31, 246 Wis. 2d 648, 630 N.W.2d 752. There is a strong presumption that a defendant received adequate assistance and that all of counsel's decisions could be justified in the exercise of reasonable professional judgment. *See* ***State v. Domke***, 2011 WI 95, ¶36, 337 Wis. 2d 268, 805 N.W.2d 364. "Reviewing courts should be 'highly deferential' to counsel's strategic decisions and make 'every effort … to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.'" ***Id.*** (quoted source omitted).

¶27 The prejudice prong of the ***Strickland*** test is satisfied where the attorney's error is of such magnitude that there is a reasonable probability that, absent the error, the result of the proceeding would have been different. ***Strickland***, 466 U.S. at 694. In other words, the defendant must demonstrate that counsel's deficient performance prejudiced the defense so seriously "as to deprive the defendant of a fair trial, a trial whose result is reliable." ***Id.*** at 687. We may address the tests in the order we choose, so we need not address deficient performance if the defendant fails to establish prejudice, and likewise, we need not address prejudice if the defendant fails to establish deficient performance. ***Id.*** at 697.

1. Counsel's Failure to Move for a Mistrial

¶28 We now provide additional background that is necessary to address Byrd's first ineffective assistance argument, involving trial counsel's failure to move for a mistrial in response to references of an ultimately dismissed fifth count. We then summarize Byrd's arguments about the references, and then explain why we conclude that Byrd fails to show he was prejudiced by these references.

¶29 In a case that began separately from this one, the State charged Byrd with one count of bail jumping for allegedly committing a new crime in Rockford on July 4, 2012. In April 2014, the circuit court joined the July 4 bail jumping case with the instant case, over defense counsel's objections, making the July 4 bail jumping charge the fifth count in this case. Later, Byrd's trial counsel filed a motion in limine seeking to prevent the State from introducing evidence related to the July 4 incident unless the alleged victim of the July 4 incident testified, because, according to Byrd, the State could not prove the fifth count without the testimony of the alleged victim. At a hearing three days before the trial, Byrd's trial counsel argued that the court would likely ultimately dismiss the fifth count for lack of evidence, because the State could not prove that Byrd committed a crime on July 4 without the victim's testimony, and the State admitted that it was having difficulty locating the victim. The court withheld ruling on the motion in limine until the day of trial to give the State the opportunity to make an offer of proof, through testimony of a police officer, that the State submitted would render the victim's testimony unnecessary to support proof of the fifth count.

¶30 When the case was called for trial, the officer who was scheduled to provide the State's offer of proof had not yet appeared. Byrd's trial counsel told

the circuit court that his position was that, while allowing the State to proceed with the July 4 count was "problematic," it would be reasonable to allow the jury to hear about the existence of the fifth count, so long as the State was not "allowed to bring up any of the facts of" the July 4 incident until the court decided whether there was sufficient evidence based on the officer's testimony. The court decided to start the trial before the offer of proof was made, with the understanding that the State would not discuss the facts of the July 4 incident until after the court had ruled on sufficiency of the offer of proof. The officer eventually appeared and, outside the presence of the jury, testified as part of the State's offer of proof. The court determined that the State's offer of proof was insufficient and dismissed the fifth count.

¶31 The jury heard two statements about the fifth count of bail jumping before the offer of proof was made and the fifth count was dismissed. The first statement was made by the circuit court at the beginning of voir dire. The court told the potential jurors about each count of the two cases. Regarding the fifth count, the court stated that the State had charged that, on July 4, 2012, "Byrd[] did intentionally fail to comply with the terms of his bond, to-wit, not commit any new crime."

¶32 The second statement referencing the fifth count came during the State's opening statement, when the prosecutor told the jury, "You will hear [about] another incident or I believe you may hear evidence of another incident that happened in July of 2012 … but I am not going to go into detail at this point because I am not sure exactly what evidence, if any, you will hear on that case."

¶33 With that additional background, we turn to Byrd's arguments. Byrd argues that defense counsel was deficient in not moving for a mistrial after the

fifth count was dismissed because the references of the court and the prosecutor to the fifth count might have improperly persuaded the jury to convict Byrd on the four remaining counts.[5] Byrd's deficiency argument is difficult to track because he refers to a series of legal concepts—mistrial, dismissal, "other acts" evidence, prejudice arising from joinder of cases, and prejudice due to ineffective assistance—without clearly explaining how these concepts might come together to form a legal argument.

¶34 In any case, we reject Byrd's argument that trial counsel should have moved for a mistrial after the court dismissed the fifth count, because Byrd does not show that the outcome of the case would have been different if counsel had moved for a mistrial. This would require Byrd to provide the legal standard for mistrial, apply this standard to the facts of the case, and show that a mistrial motion would have been granted. *See* ***State v. Lepsch***, 2017 WI 27, ¶48, 374 Wis. 2d 98, 892 N.W.2d 682 (to prove prejudice the defendant must establish that but for trial counsel's unprofessional errors there is a reasonable probability the result of the proceeding would have been different). Byrd does not do so. Instead,

[5] Byrd also argues, citing ***State v. Linton***, 2010 WI App 129, 329 Wis. 2d 687, 704, 791 N.W.2d 222, that there is inherent prejudice when two cases are prosecuted in the same trial. Byrd wrongly cites ***Linton*** for the proposition that "[t]here is a risk the jury will prematurely conclude a defendant is guilty if they are being presented with two separate cases." *See* ***id.***, ¶21. Byrd misrepresents what ***Linton*** states on this topic, and, in any event, his argument is a non-starter.

The issue in ***Linton*** was whether a defendant was prejudiced by the joinder of cases, which requires the defendant to show that a "certainty of prejudice" resulted from the joinder of two cases. ***Id.*** (quoted source omitted). This high standard is imposed because joinder is strongly favored, and the joinder statute is construed broadly in favor of initial joinder. ***Id.*** ¶14. While there are additional problems with this argument, it is sufficient to say that Byrd has not developed an argument that a "certainty of prejudice" resulted from the court's joinder of the two bail jumping cases, and therefore, we consider it no further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals may decline to address inadequately developed arguments).

he provides only conclusory statements that he was prejudiced "because the jury heard of another bail jumping count and another alleged victim" before the fifth count was dismissed.

¶35 We conclude that Byrd has not established that he was prejudiced because the jury heard these passing, non-detailed references to the charge based on the July 4 incident at the beginning of the trial. The jury did not hear any evidence whatsoever about the July 4 incident, the prosecutor equivocated and suggested that they might not ever hear any evidence on this topic, and the circuit court informed the jury at the close of evidence that the fifth count was not to be considered by the jury during deliberations. A reasonable juror would not have considered these generic references when weighing the evidence presented at trial on the four remaining counts.

2. Testimony Regarding No-Contact Bond Condition

¶36 Byrd argues that his trial counsel provided deficient performance in failing to take steps that could have prevented the State from eliciting testimony regarding one of Byrd's Rock County bond conditions at the time of his Illinois conduct that was not the subject of a charged offense in this case, namely, a no-contact bond condition. Byrd's argument is confusing, in part because he makes passing references to various alleged actions or inactions by trial counsel related to the brief testimony about the no-contact condition, without developing a clear argument that any particular action or inaction by trial counsel constituted deficient performance. However, we need not address each referenced action or inaction because we conclude that Byrd has failed to show that the testimony about the no-contact condition was prejudicial.

¶37 The testimony at issue came from a deputy clerk of Rock County circuit court, who was asked to read to the jury all of the bond conditions for Byrd's underlying Rock County felonies: not only the two conditions at issue in the bail jumping counts, but in addition a condition that Byrd not have contact with an identified person.

¶38 The deputy clerk's isolated testimony merely informed the jury that there was a no-contact condition, and the jury was not provided with any evidence or argument about how the condition came about or what it involved. Byrd gives us no reason to believe that this perfunctory reference to the no-contact condition deprived him of a fair trial with a reliable result, given the primary focus at trial by both sides on the officer's testimony about Byrd's Illinois conduct. *See* ***Lepsch***, 374 Wis. 2d 98, ¶48 (to prove prejudice the defendant must establish that but for trial counsel's unprofessional errors there is a reasonable probability the result of the proceeding would have been different).

3. Defense of Necessity

¶39 Byrd asserts that trial counsel failed to "sufficiently advocate the defense of necessity." However, Byrd fails to present an even minimally developed argument, and we reject it on that basis. *See* ***State v. Jackson***, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999) ("A party must do more than simply toss a bunch of concepts into the air with the hope that either the … court or the opposing party will arrange them into viable and fact-supported legal theories.").

¶40 Throughout his briefs on appeal, Byrd explicitly challenges only the two "new crime" bail jumping convictions. However, the only context in which this necessity-related ineffective assistance argument could make sense, as far as

we can discern, would be in connection with the two "do not leave Rock County" bail jumping convictions. That is, we glean from Byrd's confusing arguments on this topic, when read in light of references in arguments made in the circuit court, that Byrd is referring to a potential defense to the two bail jumping charges for violating the condition of his bond not to leave Rock County.

¶41 In the absence of any context, Byrd's necessity-related ineffective assistance argument is incoherent. His arguments wander from asserting that the identity of the person who caused the disturbance was a critical fact in dispute, to complaining that trial counsel failed to rehabilitate the seemingly inconsistent testimony of the host of the Rockford party regarding the time that the party started and when the 911 call was made, without clearly explaining how these arguments relate to any of the four charges against him.

¶42 Byrd acknowledges that his trial counsel "offered the affirmative defense of necessity at trial," and then repeats his complaint that trial counsel failed to secure a copy of the 911 recording seeking law enforcement assistance at the party house because of a disturbance there. Byrd ends his argument by pulling seemingly out of nowhere the argument that trial counsel failed to explain to the jury why Byrd went to Illinois. To cite only two problems with this approach, Byrd does not explain what he told trial counsel on the necessity topic at the time of trial, nor does he develop an argument as to how whatever he told counsel could have reasonably been used by counsel to support a viable affirmative defense of necessity. For that matter, Byrd fails to set forth basic analysis on the necessity defense topic, which at a minimum would include summaries of the law on the defense of necessity and the pertinent facts as viewed most favorably to the jury's verdict to the law of defense of necessity.

¶43 For these reasons, we reject Byrd's necessity-related ineffective assistance of counsel argument.

4. Cumulative Prejudice

¶44 Byrd argues that the cumulative effect of trial counsel's errors establishes prejudice. However, because we conclude that Byrd failed to develop any argument that any of trial counsel's alleged deficiencies could have prejudiced him, his argument that he suffered cumulative prejudice fails as well.

CONCLUSION

¶45 Based on the foregoing reasons, we affirm.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.