COURT OF APPEALS
DECISION
DATED AND FILED

July 26, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP701-CR **Cir. Ct. No. 2006CF1540**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DALE M. PATTERSON,

DEFENDANT-APPELLANT.

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

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Dale M. Patterson appeals from a judgment of conviction and an order denying his motion for postconviction relief. He contends that the circuit court erred in limiting his cross-examination of two state witnesses

at trial. He further contends that the court erred in denying his postconviction motion without a hearing. We reject Patterson's arguments and affirm.

¶2 In the early morning hours of April 22, 2006, Michael Griffith was found unresponsive in the back parking lot of a bar in Racine. He was transported to a hospital with serious injuries, including a fractured jaw, a fractured skull, and hemorrhaging in his brain. Griffith remained in a coma for several months until his death on November 17, 2007. The medical examiner attributed Griffith's death to the traumatic injuries sustained to his head.

¶3 Two eyewitnesses (Tina Anderson and Clifton Bryant) told police that they had observed Patterson beat and kick Griffith in the back parking lot of the bar on the night in question. The State initially charged Patterson with aggravated battery with intent to cause great bodily harm. After Griffith's death, the State amended the charge to first-degree intentional homicide. The matter proceeded to trial.

¶4 At trial, Patterson sought to cross-examine Anderson about (1) a false name she once gave to police; and (2) other criminal cases in which she had volunteered information.[1] Patterson also sought to cross-examine Bryant about two instances in which he had lied to police when questioned about his involvement in criminal activity. The circuit court prohibited Patterson from inquiring into these areas.

[1] Anderson had contacted police at least fourteen times, including on three homicides. Patterson theorized that she was an attention seeker and therefore willing to make up facts in order to be a witness.

¶5 Ultimately, the jury found Patterson guilty of the lesser-included offense of first-degree reckless homicide. The circuit court sentenced him to forty years of initial confinement followed by ten years of extended supervision.

¶6 Patterson subsequently filed a postconviction motion, alleging that his trial counsel was ineffective for failing to strike a juror for bias. The circuit court denied the motion without a hearing. This appeal follows.

¶7 On appeal, Patterson first contends that the circuit court erred in limiting his cross-examination of Anderson and Bryant. He submits that his questions were permitted under the rules of evidence.

¶8 Evidentiary rulings are committed to the circuit court's sound discretion. ***Gross v. Woodman's Food Mkt., Inc.***, 2002 WI App 295, ¶32, 259 Wis. 2d 181, 655 N.W.2d 718. A court properly exercises its discretion so long as it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach. ***State v. Lock***, 2012 WI App 99, ¶43, 344 Wis. 2d 166, 823 N.W.2d 378. We generally look for reasons to sustain discretionary decisions. *See* ***id.***

¶9 Here, the circuit court prevented Patterson from cross-examining Anderson regarding a false name she once gave to police because that conduct resulted in a conviction.[2] Likewise, the court prevented Patterson from cross-examining Anderson regarding other cases in which she had volunteered information because it found such questioning irrelevant and prejudicial. Finally, the court prevented Patterson from cross-examining Bryant regarding two

[2] Anderson was convicted of obstructing an officer in 2003.

instances in which he had lied to police because it also believed that the conduct resulted in convictions.

¶10 Reviewing the circuit court's evidentiary rulings, we conclude that they were either proper exercises of discretion or can be upheld on other grounds. *See* ***State v. King***, 120 Wis. 2d 285, 292, 354 N.W.2d 742 (Ct. App. 1984) ("If a [circuit] court reaches the proper result for the wrong reason it will be affirmed.").

¶11 With respect to Anderson's use of a false name, the circuit court relied on WIS. STAT. § 906.09 (2015-16),[3] which governs how a witness's convictions may be used for impeachment purposes. Case law interpreting that statute limits the type of information that can be adduced. In general, one can be asked only whether he or she has been convicted of a crime and, if so, how many times. *See* ***State v. Sohn***, 193 Wis. 2d 346, 353, 535 N.W.2d 1 (Ct. App. 1995). If the answers to those questions are truthful, then no further inquiry may be made. ***Id.***[4] Given this limitation, it was not unreasonable for the circuit court to bar questioning of specific conduct (*i.e.*, Anderson's use of a false name) that resulted in a conviction.[5]

¶12 With respect to Anderson's behavior in other criminal cases, the circuit court focused on whether the evidence was relevant and whether its probative value was substantially outweighed by the danger of unfair prejudice.

[3] All references to the Wisconsin Statutes are to the 2015-16 version.

[4] On direct examination, Anderson truthfully acknowledged that she had been convicted of a crime five times.

[5] Patterson suggests that cross-examining Anderson regarding her use of a false name was permissible under WIS. STAT. § 906.08(2). However, that section concerns specific instances of untruthful conduct "other than a conviction of a crime."

See WIS. STAT. §§ 904.01 and 904.03. Again, Patterson theorized that Anderson was an attention seeker and therefore willing to make up facts in order to be a witness. However, he offered nothing to show that she had done so in the other cases in which she had volunteered information. As a result, the court could reasonably exclude the line of questioning as irrelevant and prejudicial. It was, as the prosecutor aptly noted, "just an attempt to dirty this witness up."

¶13 Finally, with respect to Bryant's prior lies to police, the circuit court again invoked WIS. STAT. § 906.09 in barring the cross-examination. This appears to be an error, as there is no indication that Bryant's conduct resulted in convictions. That said, the court could have reasonably excluded the questions on grounds that they would have diverted the jury's attention to the extraneous issue of whether Bryant was involved in the criminal activity that he lied about. *See* WIS. STAT. § 904.03. In any event, the jury had ample reason to question Bryant's credibility apart from his prior lies to police. Bryant acknowledged that he had been convicted of a crime seven times. He also testified that he could not remember anything about the attack on Griffith, despite his earlier report to police. The court later characterized this testimony as "blatantly false."[6]

¶14 Patterson next contends that the circuit court erred in denying his postconviction motion without a hearing. His postconviction motion accused his trial counsel of ineffective assistance for failing to strike a juror named J.K. for

[6] Despite the problems with Bryant's testimony, the State was able to bolster its case with two other witnesses. One witness (Frank Mayweather) testified that he saw Patterson jump on Griffith's chest in the parking lot of the bar on the night of question. Mayweather came forward as an eyewitness after Patterson was already charged. The other witness (Rhonda Harris) testified that Patterson expressed remorse to her about the attack, saying that Griffith's daughter "was never going to forgive him."

bias. The claim of bias was based upon the following exchange between trial counsel and J.K. during voir dire:

> [DEFENSE COUNSEL]: [D]oes anyone else have that concern that, you know, in a serious case if you thought someone might have done it, you'd have difficulty returning a not guilty verdict?
>
> JUROR: I agree with him.[7]
>
> [DEFENSE COUNSEL]: Okay. Even if you felt you had a reasonable doubt when you looked at the evidence?
>
> JUROR: Yeah. But if I had a reasonable assumption to think that they may have done it, then it would be difficult to go either way if I wasn't a hundred percent sure.
>
> [DEFENSE COUNSEL]: Okay. Well, Ms. [J.K.], you understand the -- and we're talking to Ms. [J.K.] now. The -- you understand that the -- what the judge will instruct you on this?
>
> JUROR: Yes, I do.
>
> [DEFENSE COUNSEL]: Is that neither side is required to go a hundred percent. You don't have to believe that a fellow is a hundred percent innocent. And there is no such thing as a verdict of innocence. And you do not have to believe that a fellow is a hundred percent guilty.
>
> The question is whether you have a reasonable doubt, that is, a doubt based upon reason and common sense when you look at the evidence. Now, if you found yourself in that position where you had a reasonable doubt, do you believe in spite of any disquiet you might feel, that you could follow the judge's instructions and return a verdict of not guilty?
>
> JUROR: I think it would definitely take some time.
>
> [DEFENSE COUNSEL]: Okay. Well, we'll give you all the time you need….

[7] J.K. appeared to be agreeing with another juror, who had earlier indicated that he did not know how to answer trial counsel's question.

¶15 To be entitled to a hearing on a postconviction motion, the defendant must allege "sufficient material facts that, if true, would entitle the defendant to relief." ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. If the motion alleges sufficient facts, a hearing is required. ***Id.*** If the motion is insufficient, if it presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court may exercise its discretion in deciding whether to grant a hearing. ***Id.***

¶16 "Prospective jurors are presumed impartial, and the challenger to that presumption bears the burden of proving bias." ***State v. Smith***, 2006 WI 74, ¶19, 291 Wis. 2d 569, 716 N.W.2d 482 (citation omitted). Types of bias include subjective and objective bias.[8] "[S]ubjective bias refers to the bias that is revealed by the prospective juror on *voir dire*: it refers to the prospective juror's state of mind." ***State v. Faucher***, 227 Wis. 2d 700, 717, 596 N.W.2d 770 (1999). Objective bias relates to the question of "whether [a] reasonable person in the individual prospective juror's position could be impartial." ***Id.*** at 718.

¶17 Here, we are not persuaded that J.K.'s responses in voir dire exhibited either subjective or objective bias. J.K. never said that she could not follow the circuit court's instructions and return a verdict of not guilty once trial counsel explained to her that she did not have to be one hundred percent certain of Patterson's innocence. Her opinion that it would take time to decide the case did not mean that she could not be impartial. Indeed, after several hours of deliberation, the jury convicted Patterson of the lesser included offense of first-degree reckless homicide.

[8] Another type of bias called statutory bias is not at issue in this case.

¶18 Because J.K. did not exhibit either subjective or objective bias, trial counsel cannot be faulted for failing to strike her. *See* ***State v. Wheat***, 2002 WI App 153, ¶14, 256 Wis. 2d 270, 647 N.W.2d 441 (failure to pursue a meritless legal issue is not deficient performance). Because the record conclusively demonstrates this, we discern no error in the circuit court's denial of Patterson's postconviction motion without a hearing.

By the Court.—Judgment and order affirmed.

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