COURT OF APPEALS
DECISION
DATED AND FILED

August 2, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP166-CR **Cir. Ct. No. 2000CF403**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNETH A. HUDSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 HOOVER, P.J. Kenneth Hudson appeals a judgment of conviction for first-degree intentional homicide, attempted kidnapping, attempted first-degree intentional homicide, and first-degree reckless endangerment, and orders denying postconviction relief. Hudson presents nine categories of arguments, asserting:

(1) he was denied his constitutional right to counsel when the circuit court compelled him to proceed to trial pro se; (2) the circuit court, without a hearing, erroneously rejected Hudson's claims that the State interfered with his attempts to retain private counsel; (3) the court erroneously denied, without a hearing on most claims, Hudson's assertions of misconduct, evidence tampering, and bad faith discovery violations; (4) the court erroneously denied Hudson's ineffective assistance of counsel claims without a hearing; (5) the court exceeded its authority by instructing Hudson's reinstated counsel to pursue a specific trial strategy; (6) the court erroneously denied, without a hearing, Hudson's claim that incriminating statements should have been excluded at trial; (7) the court erroneously denied, without a hearing, Hudson's due process challenge to courtroom safety procedures; (8) the court should have granted Hudson's motions for change of venue and to strike the jury panel; and (9) he is entitled to a new trial in the interest of justice. We reject each of Hudson's argument and affirm.

BACKGROUND

¶2 The following facts were elicited at trial. On the weekend of June 23-25, 2000, Hudson and his girlfriend, Danita Scharenbroch, went camping with family and friends. Hudson drove his truck, pulling a boat on a trailer. During the trip, Hudson argued with his mother, who said she wished Hudson had died instead of her "good son." On Sunday morning, Hudson and Scharenbroch also argued, with Scharenbroch telling Hudson, "We are done, … through," and Hudson saying, he "could just kill" her. Hudson vowed not to return home and drove away.

¶3 At 4:40 p.m. that Sunday, a store employee sold a hunting knife to Hudson. The employee thought Hudson looked "rough[]"and "shaky." A store

manager stated Hudson appeared "mad." After 5:30 p.m., Shanna Van Dyn Hoven went jogging at a nearby quarry. Before 6:00 p.m., motorist John Panetti saw Hudson's truck, boat, and trailer "backed in" by a quarry entrance.

¶4 Shortly after 6:00 p.m., David Carnot was working outside when he heard a woman screaming near the quarry and ran to investigate. Carnot saw Hudson hanging onto the open driver side door of a truck, standing over Van Dyn Hoven on the ground. The truck had a trailer with a boat. When Carnot demanded to know what was going on, Hudson jumped into the truck and drove directly at him. As Carnot climbed the quarry fence, the truck rammed the fence, causing Carnot to fall on the truck cap. When the truck got caught in the fence, Carnot jumped the fence, and Hudson revved the truck to free it, then sped off. Carnot went to Van Dyn Hoven, who was lying, unresponsive, in a pool of blood.

¶5 Diane Vandenberg heard screams, tires squealing, and the sound of a vehicle hitting something before Carnot appeared and told her to call 911. Other citizens arrived to find a lifeless Van Dyn Hoven, with a vehicle window crank lying nearby.

¶6 Matt and Amy Brittnacher were driving home at 6:20 p.m. when they saw a truck with a flat front tire "dragging a boat." When Matt offered to help, the male driver sped off, leaving the boat behind. At about the same time, a truck with a flat tire and a boat trailer sped by Melvin Vanden Bloomer, who saw the driver toss something out the window. Police recovered a wad of papers with possible bloodstains.

¶7 The truck, emitting smoke from the flat tire, passed by Kaukauna Police Sergeant Robert Patschke. Patschke activated his car's siren and lights, but the truck did not slow down. As the truck's tire was disintegrating, rubber and

metal pieces were hitting the squad car, and sparks flew as the wheel rim gouged the highway. The truck reached eighty to ninety miles-per-hour as Patschke radioed for assistance.

¶8 A Little Chute squad car and two Grand Chute squad cars joined the pursuit, as the truck ran red lights and weaved between cars at seventy miles-per-hour. The truck avoided stop sticks and forced traffic aside before Grand Chute Police Sergeant Todd Zolkowski maneuvered his squad car in front of the truck, forcing it to stop. The chase covered sixteen miles.

¶9 From radio contact with Kaukauna Police Officers Gerald Rosche and Rex Swanson, Patschke learned that the truck was suspected in a woman's death, possibly due to a hit-and-run. Hudson was ordered out of the truck and handcuffed. He was shirtless, wearing denim shorts and sandals. Hudson had apparent blood visible on his arms, chest, stomach, legs, and feet. Because Hudson was hyperventilating, he was taken to a hospital, where he was in no medical distress, with an elbow scrape and facial cut. His system contained alcohol, Valium, and marijuana.

¶10 Patschke and Zolkowski saw a blood-soaked passenger side of the truck's seat and a red-stained knife under the brake pedal. Grand Chute Officers Randy Reifsteck and David Jackson also saw the knife. Patschke radioed Rosche, inquiring whether the woman at the quarry had knife wounds, and Rosche replied she had possible stab wounds.

¶11 Simultaneous with the chase, Rosche and Swanson had responded to the quarry. Van Dyn Hoven was pulseless and not breathing. She had stab wounds to her back and abdomen that punctured her lungs, penetrated her intestines, and caused her death. Police recovered a vehicle window crank near

Van Dyn Hoven's body. An amber lens and chrome trim lay near a quarry gate. Hudson's truck was missing the passenger side window crank, and the lens and trim from the left headlight. Gray paint on the quarry gate matched the truck.

¶12 From the hospital, Hudson was taken to the Kaukauna police station for questioning. Hudson initially denied stabbing anyone, but later stated, "I got into an argument with a girl and I think I stabbed —." Hudson said he "pushed the girl into the passenger side of the truck" and she "fought with me like my mother did." Hudson believed he stabbed the girl while she was in his truck, but did not know how many times. He said he bought the hunting knife that day to clean fish. Hudson told police that after the girl got out of his truck, "some guy came at him," Hudson "swerved his truck," he "hit something, and … his tire blew out." Hudson said that as he drove away, his boat came loose, so he disengaged it.

¶13 Hudson was then taken to jail. On the way, Hudson asked what charges he faced and was told "homicide-related charges." Hudson started to cry and moaned, "Why did I stab her? ... I didn't want for her to die. This is all because of my mother. I didn't even know her." After asking if Wisconsin had the death penalty, Hudson said he "wanted to die," and that "his dad and his brother were looking down on him right now, seeing what he had done." The next morning, Hudson wanted to shower blood off his feet. When the jailer asked if he was hurt, Hudson replied, "No, it's from her."

¶14 Van Dyn Hoven's blood was found on the passenger side seatbelt of Hudson's truck, the exterior passenger door, the interior driver door, the truck cap, the knife in the truck, and on swabs of Hudson's right hand. Her thumb print was on the interior passenger door of the truck.

¶15 Hudson's pro se defense at trial was that police had framed him for the homicide. Hudson, who acknowledged seven prior convictions, asserted that an officer poured blood on him in the squad car, that he was turning his truck around at the quarry, that he did not force Van Dyn Hoven into his truck or stab her, that he did not try to run down Carnot, and that he did not recall the high-speed chase.

DISCUSSION

¶16 Hudson's brief's table of contents spans ten pages. He presents approximately four dozen arguments. We reject them all. Most of Hudson's arguments are either insufficiently developed or constitute harmless error.[1] Raising every conceivable claim of error rather than "winnowing the potential claims so that the court may focus on those with the best prospects," is not effective appellate advocacy. ***Page v. United States***, 884 F.2d 300, 302 (7th Cir. 1989).

I. Whether Hudson was unconstitutionally deprived of his right to counsel

¶17 Hudson asserts the circuit court wrongly forced him to proceed pro se at trial, in violation of his constitutional right to counsel. A waiver of

[1] We rejected Hudson's initial 29,969-word brief. However, we permitted him to file an oversized brief not to exceed 14,000 words. Counsel may be tempted to suggest that a greater expansion of the word limit is justified by the number of claims we reject as insufficiently developed. However, many of Hudson's claims patently lack merit and should have been omitted. While counsel has a duty not to raise meritless issues, we recognize counsel's filing here may have been motivated by an attempt to comply with the demands of a difficult client.

Hudson was convicted in 2001. However, this is still his direct appeal. Hudson has had several postconviction/appellate attorneys, and has filed multiple postconviction motions. This appeal follows the denial of his "comprehensive motion."

counsel cannot be presumed and must be affirmatively shown to be knowing and voluntary for it to be valid. ***Pickens v. State***, 96 Wis. 2d 549, 555, 292 N.W.2d 601 (1980), *overruled on other grounds by* ***State v. Klessig***, 211 Wis. 2d 194, 564 N.W.2d 716 (1997) (mandating a waiver colloquy). Nonetheless, a defendant may forfeit counsel "'by operation of law because the defendant has deemed *by his [or her] own actions* that the case proceed accordingly.'" ***State v. McMorris***, 2007 WI App 231, ¶23, 306 Wis. 2d 79, 742 N.W.2d 322 (quoting ***State v. Woods***, 144 Wis. 2d 710, 715-16, 424 N.W.2d 730 (Ct. App. 1988)).

¶18 "The right to counsel cannot be manipulated to obstruct the orderly procedure for trial or to disrupt the administration of justice." ***State v. Coleman***, 2002 WI App 100, ¶17, 253 Wis. 2d 693, 644 N.W.2d 283. The triggering event for forfeiture is when the "court becomes 'convinced that the orderly and efficient progression of [the] case [is] being frustrated'" by the defendant's repeated dissatisfaction with his or her successive attorneys. ***Id.*** (quoting ***Woods***, 144 Wis. 2d at 715). However, the defendant must also have the purpose of causing that effect. ***Id.***, ¶18. Additionally, "when a defendant engages in conduct meriting forfeiture, the court must determine whether the defendant is competent to proceed without an attorney." ***Id.***, ¶34.

¶19 Our supreme court has recommended that circuit courts take the following procedural steps when determining a forfeiture of counsel: (1) provide explicit warnings that, if the defendant persists in particular conduct, the court will find that the right to counsel has been forfeited; (2) engage in a colloquy to ensure the defendant is aware of the difficulties and dangers of self-representation; (3) make a clear ruling when the court deems the right to counsel to have been forfeited; and (4) make factual findings to support the court's ruling. ***Id.***, ¶22

(citing ***State v. Cummings***, 199 Wis. 2d 721, 756 n.18, 764, 546 N.W.2d 406 (1996) (majority; Geske, J., dissenting)).

¶20 Hudson originally was represented by two public defenders. However, they were allowed to withdraw on October 13, 2000, due to a conflict of interest with a prosecution witness. Trial was set for December 4, 2000. The court immediately appointed Attorney Nila Robinson as Hudson's new counsel. Two weeks before trial, Robinson moved for a new trial date and to withdraw.[2]

¶21 Robinson stated Hudson "was angry, blaming, and hostile" toward her, believing her to be "a bad lawyer, neglectful, and unmotivated to help him." She described Hudson as "insulting and vituperative," "angry at a level that I cannot describe," making it "impossible" to work with him. Robinson indicated the breakdown amounted to Hudson's "overwhelming personal rejection of all of me," as reflected in his "demeanor, vocabulary, attitude, [and] volume." Hudson stated he was unhappy with counsel's advice to pursue a plea agreement. Robinson reported she told Hudson "that he can get replacement counsel once, and, thereafter, he's not going to be able to replace counsel or he will be without counsel."

¶22 After warning Hudson that he was eschewing "very, very competent" counsel, the court granted Hudson's requests for new appointed counsel and a later trial date. The court warned Hudson: "[Y]ou better learn to cooperate with your new attorney because there won't be another one." Attorney

[2] Robinson averred that the request for a later trial date was caused not by Hudson, but Robinson's inability to adequately prepare in time for trial.

Edmund Carns was appointed November 30, 2000, with a new trial date of March 5, 2001.

¶23 On February 8, 2001, Hudson told the court he wanted to replace Carns for allegedly not sharing discovery and for advising him to withdraw his plea of not guilty by reason of mental disease or defect. Carns responded that he had received "zero cooperation from" Hudson, who "refuses to take my advice" and engages in "acrimonious discussions" on "irrelevancies." Carns stated Hudson consistently "impugned my integrity," making it "impossible to represent" him or even "sit[] in the same room with" him. The court reserved decision on Hudson's request to discharge Carns, noting that Hudson was free to hire counsel, giving him eleven days to report if he had done so.

¶24 At the next hearing on February 19, Hudson maintained that Carns "do[es]n't want to work on my case." The court took judicial notice of a prior case file to illustrate that Hudson had behaved similarly in that case, twice making last minute requests for different counsel. Ultimately, the court told Hudson:

> There gets to be a point when you either decide to try the case yourself or the Court will find that you are dilatory in trying to delay the case and will refuse to work with an attorney and, thus, that you have involuntarily decided to go pro se.
>
> Now, you either work with your attorney or you try the case yourself.

When Hudson complained about missing evidence, the court sought input from Carns, who indicated Hudson still "refuses to cooperate." When the court asked Hudson once more to choose counsel or self-representation, Hudson replied, "Then I'll prepare to try the case myself because I don't want Mr. Carns." In

concluding that Hudson forfeited his right to counsel, the court identified Hudson's "dilatory tactics," in addition to noncooperation with counsel.

¶25 The court ordered Carns to act as standby counsel. Hudson represented himself through the first three days of trial. On the fourth day, Hudson stated he could not go on due to an alleged death threat, and asked for a continuance to enable his family to try to hire counsel. The court activated Carns as full counsel. After a recess, Hudson changed his mind and sought to resume self-representation, which the court denied. Before the trial continued, Carns reported that Hudson "leaned over to me and said, 'You're going down.'"

¶26 We agree with the circuit court's conclusion that Hudson forfeited his right to counsel. Not only did Hudson reject and fail to cooperate with several attorneys in this case, Hudson's actions in a prior case revealed a continuing pattern of conduct. Hudson objects that the judge in the prior case had concluded the conduct there was not for the purpose of delay. The circuit court in this case, however, was free to draw its own conclusions, having the benefit of witnessing Hudson's continuing pattern of conduct.[3] Further, that Hudson's behavior resulted in a delay in the prior case demonstrates that he knew he might obtain the same in this case. Indeed, he did obtain one trial delay in this case after he refused to cooperate with his attorney.

¶27 In accordance with ***Cummings***, Hudson was repeatedly warned by the court—and by outgoing counsel—that Carns would be his final attorney and that Hudson therefore needed to cooperate with him. This is perhaps the most

[3] The circuit court later reaffirmed its conclusions after having heard testimony from the attorneys in the prior case.

significant component of the forfeiture analysis. *See* ***Coleman***, 253 Wis. 2d 693, ¶¶27-31. Moreover, Hudson was given a brief additional opportunity to seek counsel at his own expense.

¶28 The court did not engage Hudson in a colloquy to inform him of the difficulties of self-representation. While such a colloquy is preferred, it is not required. *See* ***id.***, ¶23. In addition, the court appointed standby counsel, who was available throughout trial if Hudson desired assistance.[4]

¶29 As to the third and fourth ***Cummings*** recommendations, the circuit court made a clear forfeiture ruling, supported by fact findings, memorialized in writing. Thus, the court fully complied with three of the four nonmandatory procedural recommendations, including the most significant, that Hudson be forewarned of the potential for forfeiting his right to counsel.

¶30 Regarding competency, there is ample evidence in the record as a whole to conclude Hudson was competent to proceed pro se, as set forth in the State's brief. *See* ***Klessig***, 211 Wis. 2d at 213-14. Among other things, Hudson was age thirty-one, with one year of college in business management, and the circuit court had the benefit of psychological evaluations that found Hudson competent to stand trial and undermined his insanity defense.

[4] The discretionary appointment of counsel is separate from the forfeiture determination itself. ***State v. Cummings***, 199 Wis. 2d 721, 754-56, 546 N.W.2d 406 (1996). However, as the State emphasizes, the appointment of standby counsel has been suggested as good practice in cases where forfeiture has occurred. *See* ***id.*** at 764 (Geske, J., dissenting).

II. Whether the State's conduct deprived Hudson of counsel of his choice

¶31 Hudson argues the circuit court erroneously failed to conduct an evidentiary hearing on his claims that the State interfered with his attempts to retain private counsel. If a postconviction motion alleges facts that, if true, would entitle the defendant to relief, the circuit court must conduct an evidentiary hearing. ***State v. Bentley***, 201 Wis. 2d 303, 310-11, 548 N.W.2d 50 (1996). The "'Sixth Amendment guarantees the defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he [or she] is without funds.'" ***United States v. Gonzalez-Lopez***, 548 U.S. 140, 144 (2006). Conversely, "the right to counsel of choice does not extend to defendants who require counsel to be appointed for them." ***Id.*** at 151.

¶32 Hudson contends the State interfered with his attempts to retain counsel when it arrested his girlfriend, Scharenbroch, for violating a no-contact order. Scharenbroch was arrested on February 8, 2001, four days after the circuit court granted Hudson eleven additional days to retain private counsel. Hudson asserts he is entitled to an evidentiary hearing to inquire into the State's motivations for arresting and charging Scharenbroch when they did, even though they were long-aware of her numerous ongoing contacts with Hudson.

¶33 We reject Hudson's claim because the State's alleged motivations have no bearing on whether Hudson was in fact deprived of his right to counsel of his choice. Hudson had ample opportunity to retain private counsel. Hudson was dissatisfied with his appointed attorneys for months prior to Scharenbroch's arrest. During that time he attempted, but was unable, to retain private counsel—with or

without Scharenbroch's assistance. Because Hudson required appointed counsel, he was not entitled to counsel of his choice. *See* ***id.***

III. Whether the court erroneously denied Hudson's nineteen claims of misconduct, evidence tampering, and bad faith discovery violations

¶34 Hudson claims the State withheld an audiotape of conversations at the hospital after Hudson's arrest. The State told the circuit court that Hudson's alleged request for counsel at the hospital was ambiguous. Over five years after Hudson's trial, upon our order, the State provided a transcript of the audiotape. The transcript reveals Hudson unequivocally invoked his right to counsel at the hospital. Hudson also alleges the State manually erased a videotape of Hudson's interrogation at the station. Hudson claims he invoked his right to counsel again during the stationhouse interrogation, and also denies making incriminating statements during the interrogation.

¶35 The remedy for Hudson's claims would be to suppress any incriminating statements Hudson made. We reject his arguments on the basis of harmless error. There was overwhelming eyewitness and physical evidence against Hudson. We are satisfied beyond a reasonable doubt that the exclusion of all incriminating statements would have had no effect on the outcome of Hudson's trial.[5] *See* ***State v. Lammers***, 2009 WI App 136, ¶¶12, 25, 321 Wis. 2d 376, 773 N.W.2d 463. Moreover, Hudson does not appear to argue that his spontaneous statements made in the back of the squad car or in the jail would have been inadmissible.

[5] Hudson did not offer his own complete version of events at trial, but did so at a postconviction hearing. Because the jury did not hear that version, it is irrelevant to the jury's deliberations.

¶36 Hudson also argues the State improperly asserted in opening and closing arguments that the papers he threw from his truck contained Van Dyn Hoven's blood when, in fact, that blood was never tested. Even if we were to accept Hudson's argument, exclusion of the photos of the papers and the improper arguments would not have affected the outcome of the trial. Further, post-trial DNA testing revealed the blood was Van Dyn Hoven's.

¶37 Additionally, Hudson argues he was entitled to an evidentiary misconduct hearing to show officers tampered with the knife found in his truck, speculating they took the victim's blood from the truck and applied it to the knife. This argument is conclusory, meritless, and insufficiently developed. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

¶38 Hudson further argues law enforcement violated a gag order by conducting a press conference days before trial. He asserts the press conference included "inflammatory content." Hudson does not identify the objectionable content, suggest how it may have impacted his trial, or develop any argument in support of his assertion that an evidentiary hearing was required to investigate the prosecutor's knowledge of the press conference. *See* ***id.***

¶39 Hudson's remaining evidence suppression and tampering arguments are not sufficiently developed to merit review, *see* ***id.***, and/or are subject to harmless error, and do not merit individual attention. The various evidence Hudson addresses was sought to support his defense that he was framed. Even if Hudson presented or challenged the various items of evidence as he claims he should have been able to do, no reasonable person would have accepted Hudson's conspiracy defense, particularly in light of Hudson's high-speed flight from the scene and police, his unprompted incriminating statements, and eyewitness

testimony. Additionally, to the extent the State responded to the merits of Hudson's various arguments, we would agree with the State's responses.

IV. Whether the court erroneously denied Hudson's ineffective assistance of counsel claims without a hearing

¶40 Hudson alleges fifteen claims of ineffective assistance by Carns, who represented Hudson as trial counsel for three months before trial and then became standby counsel, until taking over again as full counsel on the fourth day of trial. To establish ineffective assistance of counsel, a defendant must prove both that counsel's performance was deficient, and that the deficient performance prejudiced the defendant. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984); ***State v. O'Brien***, 223 Wis. 2d 303, 323-24, 588 N.W.2d 8 (1999). If a defendant fails to adequately show one prong, we need not address the other. ***Strickland***, 466 U.S. at 697.

¶41 The majority of Hudson's ineffective assistance claims are duplicative, in substance, to claims we have already rejected in section three of this decision. We therefore agree with the State that Hudson's arguments identified as IV A., B., D., I., J., K., L., M., and Q. fail because Hudson cannot satisfy the prejudice prong. That is, none of the alleged errors, independently or collectively, undermine our confidence in the outcome of Hudson's trial. Among other evidence, Hudson's high-speed flight from the scene in his damaged truck—after abandoning his boat on the roadside; his unchallenged, unprompted statements in the back of the squad car and the jail; and his failure to offer the jury a full innocent explanation for his actions, convince us there is no reasonable probability of a different outcome.

¶42 In addition to those arguments we do not address, Hudson asserts Carns was ineffective for not attempting to suppress Hudson's stationhouse confession. This argument also fails on the prejudice prong. The incriminating evidence was overwhelming, such that exclusion of Hudson's confession would have had no practical effect on the outcome of trial. Moreover, Hudson's argument is insufficiently developed. *See* ***Flynn***, 190 Wis. 2d at 39 n.2.

¶43 Hudson also contends Carns was ineffective for presenting a "no intent" defense, rather than Hudson's defense that the police framed him. He asserts that it was "objectively unreasonable for Carns to argue a lesser-included defense when no lesser-included crimes were submitted to the jury[,]" and that it conflicted with Hudson's overarching strategy of acquittal. Nonsense. Hudson protested to the court that *he did not want* any lesser included offenses presented to the jury. Moreover, arguing that one of the elements of the crime was not proven was wholly consistent with Hudson's overall strategy of acquittal. "A strategic trial decision rationally based on the facts and the law will not support a claim of ineffective assistance of counsel." ***State v. Elm***, 201 Wis. 2d 452, 464-65, 549 N.W.2d 471 (Ct. App. 1996). Indeed, Hudson's frame-up theory—premised on a conspiracy between numerous law enforcement officers from multiple agencies—was so preposterous that his claim that Carns pursued an objectively unreasonable strategy would be stronger if Carns had instead relied solely on the conspiracy defense.

¶44 Hudson also faults Carns for not objecting to "unwarranted security procedures." This claim is not sufficiently developed. *See* ***Flynn***, 190 Wis. 2d at 39 n.2.

¶45 Hudson further complains Carns should have impeached the testimony of Robert Huss, who stated he twice noticed Hudson's truck pulling a boat and trailer near the quarry in the weeks prior to the crime. This claim is not sufficiently developed. *See* ***id.*** Moreover, as the State observes, the proposed testimony would not have actually impeached Huss's testimony, and, regardless, Huss's testimony was not critical to the State's case. Hudson also alleges a failure to impeach—with unspecified testimony by an unspecified witness—the testimony of the witness who observed Hudson's truck and trailer backed in by the quarry on the evening of the assault. This claim is not developed. *See* ***id.***

¶46 Finally, Hudson challenges Carns' failures to discover pretrial, and elicit testimony, that Carnot's fingerprints were not found on Hudson's truck cap. However, when Hudson was acting as his own counsel, he could have simply asked the crime lab analysts who testified if they had found Carnot's fingerprints on Hudson's truck. Moreover, even if Carnot touched the truck cap after Hudson knocked him off the quarry fence, Hudson provides no basis demonstrating that Carnot would have left identifiable fingerprints. In faulting Carns, Hudson must allege what the fingerprint testimony would have been. *See* ***id.*** at 48. Thus, Hudson's claim again fails on the prejudice prong.

V. Whether the court exceeded its authority by instructing Carns to pursue his no intent defense strategy over Hudson's objection

¶47 Hudson argues the trial court interfered with his due process right to present a defense when, contrary to Hudson's wishes, the court authorized Carns to make a closing argument challenging the sufficiency of the evidence of Hudson's intent to commit the homicide, attempted kidnapping, and attempted homicide. Additionally, Hudson characterizes the court's conduct as judicial bias. This argument is frivolous.

¶48 Hudson again asserts that Carns' defense was unreasonable because it was a compromise strategy requiring the submission of lesser included offenses. We have already rejected that position, which has no basis in law or fact. It is rudimentary that a failure of proof on any element would result in acquittal.

¶49 Hudson accuses the circuit court of objective bias because it "reject[ed] Hudson's right to maintain his innocence." Hudson's bias claim fails because it is premised on a misapprehension of the elementary legal principle stated above. Contrary to Hudson's characterization, Carns was not conceding Hudson committed the charged acts, nor was counsel forgoing Hudson's conspiracy defense. Rather, Carns was arguing for Hudson's acquittal of the homicide, attempted kidnapping, and attempted homicide charges on an alternative to Hudson's theory. Jurors had already heard the frame-up theory from Hudson himself, through a combination of testimony and oral argument.

¶50 By authorizing Carns to make the no intent argument, concluding it was in Hudson's best interest, the court was, if anything, exhibiting proper concern for Hudson's defense. Moreover, Carns made closing argument as Hudson's full counsel, and "counsel has wide latitude in deciding how best to represent a client" at closing argument. ***Yarborough v. Gentry***, 540 U.S. 1, 5-6 (2003). The court exhibited no bias against Hudson.

VI. Whether the court erroneously denied, without a hearing, Hudson's claim that incriminating statements should have been excluded at trial

¶51 Hudson argues he was entitled to an evidentiary hearing on his claims that his incriminating statements should have been held inadmissible at trial because he unequivocally invoked his right to counsel. Hudson spoke to law enforcement four times after his arrest: (1) at the hospital during a blood draw and

search warrant execution; (2) during a stationhouse interview; (3) during a ride to jail after the interview; and (4) at the jail the next morning. He maintains that he invoked his right to counsel at the hospital and at the stationhouse interview, and that he so informed his attorneys before proceeding pro se.

¶52 The State did not introduce at trial any statements Hudson made at the hospital. However, the State concedes a hearing would be necessary to resolve credibility issues regarding the stationhouse interrogation. Regarding the subsequent statement in the squad car, the State argues the statement was sufficiently attenuated from any illegality. Hudson concedes this argument by failing to present a countervailing attenuation analysis in his reply brief. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded). Moreover, we observe that because Hudson asserts he did not incriminate himself at the police station, he can hardly argue he made the subsequent statements only because "the cat was out of the bag." Neither Hudson nor the State addresses the admissibility of Hudson's statement to the jailer that the blood on his feet was "from her." We therefore presume it was admissible.

¶53 While Hudson would otherwise be entitled to a hearing concerning the admissibility of his statements from the stationhouse, we have already concluded that any error in the admission of Hudson's statements constituted harmless error because there was overwhelming evidence of Hudson's guilt.

VII. Whether the court erroneously denied Hudson's due process challenge to courtroom safety procedures

¶54 Hudson asserts he was deprived of due process because the court made no individualized determination of the necessity of courtroom safety

procedures, namely, that Hudson wore a stun belt and was "shadowed" by law enforcement while presenting his defense.

¶55 Hudson's argument is insufficiently developed. He requests remand for an additional hearing, but does not explain why this is necessary.[6] *See* ***Flynn***, 190 Wis. 2d at 39 n.2. Hudson also fails to discuss the criticism set forth in his argument's caption, that the court failed to make a necessity determination.[7]

VIII. Whether the court erroneously denied Hudson's motions for change of venue and to strike the jury panel

¶56 Hudson asserts, without record citation, that twenty-three jurors were struck for cause stemming from the perception of Hudson's guilt. He also references, without citation, what he characterizes as an inflammatory press conference days before trial, allegedly in violation of a gag order, addressing the intended use of a stun belt at trial. Hudson further suggests that eleven jurors acknowledged exposure to pretrial publicity. Hudson fails to provide a properly developed legal argument with record citations and application of legal authorities. We therefore do not address the issue. *See* ***id.*** Moreover, the State challenges the accuracy of, and elaborates upon, Hudson's factual assertions, and presents a fully developed, persuasive legal argument.

[6] Hudson complains that the circuit court failed to consider a federal court decision from the eleventh district. The circuit court, however, was not bound to follow that decision.

[7] In a letter citing supplemental authority pursuant to WIS. STAT. RULE 809.19(10) (2009-10), the State argues we should rely on our recent holding that "a trial court has no sua sponte duty to inquire into the necessity of hidden restraints." ***State v. Miller***, 2011 WI App 34, ¶11, 331 Wis. 2d 732, 797 N.W.2d 528. That case, concerning the potential prejudicial effect of jurors viewing restraints, *see* ***id.***, ¶11, has no application here. Hudson's argument is that the hidden stun belt had a crippling psychological effect on his ability to present a defense. We explicitly declined to address that issue in ***Miller***. ***Id.***, ¶13.

IX. Whether Hudson is entitled to a new trial in the interest of justice

¶57 Hudson argues the case was not fully tried because of (1) the combination of pro se and unprepared counsel, (2) the State's discovery violations, (3) the lack of the victim's blood on multiple surfaces, and (4) Hudson's valid defense. We reject Hudson's plea to grant a new trial in our discretion. Hudson caused the representation issues by his own conduct; none of the actual or alleged discovery violations had any practical effect on the outcome of trial; the victim's blood was found on Hudson's hand, interior driver's door, and the seat of his truck; and Hudson's conspiracy defense was far-fetched.

By the Court.—Judgment and orders affirmed.

Not recommended for publication in the official reports.