COURT OF APPEALS
DECISION
DATED AND FILED

May 16, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2010AP2516-CR **Cir. Ct. No. 2006CF745**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LESHURN HUNT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed.*

Before Higginbotham, Sherman and Blanchard, JJ.

¶1 HIGGINBOTHAM, J. Leshurn Hunt appeals a judgment of conviction entered on a jury verdict finding him guilty of numerous felonies, and an order denying his motion for postconviction relief. Following a colloquy by the circuit court to ensure that Hunt knowingly, intelligently, and voluntarily waived

his right not to testify, Hunt told the court that he decided to testify. However, after an exchange among the circuit court, the prosecutor, and defense counsel about evidentiary matters, Hunt changed his mind and decided not to testify. On appeal, Hunt argues that his decision not to testify was not knowing, intelligent, and voluntary because: (1) the court conducted a defective colloquy; (2) Hunt was coerced to waive the right to testify; and (3) Hunt received ineffective assistance of counsel. In addition, Hunt argues that the court conducted an improper suppression hearing. For the reasons explained below, we affirm.

BACKGROUND

¶2 Hunt was charged with one count of armed robbery, one count of possession of a firearm by a felon, two counts of false imprisonment by use of a dangerous weapon, and two counts of making threats to injure by use of a dangerous weapon. The charges stemmed from allegations that Hunt threatened two store clerks at the Dollar Saver Store in Pleasant Prairie with "what looked like a homemade[-]type shotgun," demanded that one of the clerks put money from the store's cash register into a bag, and forced the clerks into a room at the back of the store where he ordered them to stay. The case was tried before a jury.

¶3 At trial, after the State rested its case-in-chief, the prosecutor informed the court that he had learned from defense counsel that Hunt was likely to testify. The prosecutor told the court that Hunt "was likely to provide reasons why he is innocent" of an armed robbery that occurred in Waukegan, Illinois, about an hour and a half before the armed robbery at the Dollar Saver Store. An Illinois jury had found Hunt guilty of committing the Waukegan armed robbery. The prosecutor asked whether he could introduce the Illinois judgment of conviction as evidence in the event that Hunt testified that he did not commit the

armed robbery in Waukegan. The court determined that, if Hunt testified that he did not commit the Waukegan armed robbery, the prosecutor would be allowed to introduce the Illinois judgment of conviction.

¶4 The prosecutor then asked the court to bar Hunt from testifying that the police used excessive force against him while interrogating him about the Pleasant Prairie and Waukegan armed robberies. The court indicated that the testimony would be allowed only if it were relevant and that it would be relevant only if the alleged police brutality occurred before Hunt made inculpatory statements to the police. On this basis, the court declined to rule on whether to admit that evidence at that time.

¶5 Although the court was informed that Hunt intended to testify, and courts are encouraged but not required to conduct colloquies when defendants decide to testify, the court conducted an on-the-record colloquy with Hunt. *See* ***State v. Denson***, 2011 WI 70, ¶¶63-67, 335 Wis. 2d 681, 799 N.W.2d 831. The court advised Hunt that he had two options: to testify or not to testify. The court then proceeded to explain to Hunt some of the potential consequences of testifying.[1]

[1] We provide an excerpt of the relevant portion of the court's colloquy.

> THE COURT: Now I'm going to give you some—I'm going to make a record right now, Mr. Hunt. You have two choices at this point …. You can testify or … you can decide not to testify and it's your decision…. Certainly, you are well-advised to listen carefully to the advice of [defense counsel], but ultimately, it's not his decision, it's yours …. The things you need to understand is if you testify, the district attorney will be allowed to question you about anything which is relevant to this case. Which could actually include, for example, the robbery in [Waukegan,] Illinois. [The prosecutor] will be able to question you and you will not be able to take the Fifth Amendment about

(continued)

¶6 Near the end of the colloquy, the circuit court asked Hunt if he understood what the court explained. Hunt replied, "To some degree, yeah." The court asked Hunt "to what degree [he did not] understand." Hunt told the court that he "would love to testify" but indicated that he wanted to know "a little" about the topics that the State would be allowed to address that might impeach him and the topics that he would be allowed to address if he decided to testify. Hunt stated that it was his understanding that he would not be allowed to testify "about any [police] beating." The court reiterated that Hunt would be allowed to testify on that topic only if it were determined to be relevant, but declined to make an evidentiary ruling at that time.

¶7 The court asked Hunt whether he had any other questions, and Hunt responded that he did not. The court gave Hunt ten minutes to confer with defense

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> that. To the extent that it's relevant to this case, you'll have to answer those questions…. [The prosecutor will] be able to ask you about former convictions because every witness is subject to being questioned about former convictions. If you have former convictions, the answer you must give is, of course, the truth. You will not be subject to being impeached on that…. So he can ask you if you've been convicted of a crime and if so, how many times. If you answer those questions correctly, that's the end of the matter.… If you do not answer correctly, he'll be able to identify by court, crime and date the crimes of which you were convict[ed] .... Separately from that, if it is not remote in time and bears upon your honesty as a witness, he may be permitted by the Court to ask you about other acts which you have engaged in, some of which may be crimes which may tend to influence the jury's consideration of whether you're an honest person or not…. So … that's what goes with testifying. You can tell your story, but you're subject to being questioned by the district attorney or you can remain silent … and if you do that you'll have a choice whether you want me to tell the jury that you have a right not to testify and that your silence should not be considered in any way against you ….

counsel. After the break, the court asked Hunt whether he wanted to testify. Hunt clearly stated that he wanted to testify.

¶8 The prosecutor next asked to address additional evidentiary matters with the court. The prosecutor informed the court that he believed Hunt had five prior convictions that were admissible for impeachment purposes, and both defense counsel and the circuit court agreed on this number.

¶9 The prosecutor next asked the court whether he would be allowed to question Hunt regarding Hunt's use of a gun during the armed robbery and murder of a gas station clerk in Illinois that led to Hunt's convictions for those crimes in 1984. At first, the court stated that there was a "substantial" chance that the State would be allowed to introduce this evidence, but later stated that there was only "a chance" the State would be allowed to introduce the evidence, but declined to make an evidentiary ruling at that time.

¶10 The prosecutor also asked the court whether the State would be allowed to question Hunt regarding an allegation Hunt made in 1984 that the police used excessive force against him when they placed him under arrest. The prosecutor indicated that, if Hunt testified that the police used excessive force against him in this case, he would seek to introduce evidence that Hunt made a similar unsubstantiated claim in 1984. The court declined to make an evidentiary ruling on that issue as well.

¶11 The court then returned to the topic of whether Hunt wanted to testify and asked Hunt for a "final decision." Hunt briefly consulted again with defense counsel off the record. Hunt then informed the court that he had decided not to testify, and the court confirmed with Hunt that his decision was not to testify. The defense rested its case, and the jury found Hunt guilty of all charges.

¶12 Hunt filed a postconviction motion requesting a new trial or, at a minimum, an evidentiary hearing on whether his waiver of the right to testify was knowing, intelligent, and voluntary. The circuit court denied Hunt's postconviction motion without an evidentiary hearing. Hunt appeals.

DISCUSSION

¶13 Before we address the merits of this case, we pause to clarify the type of waiver that is at issue here. As we have noted, counsel for Hunt initially indicated that Hunt intended to testify. The circuit court conducted a colloquy that was largely focused on Hunt's apparent intent to testify, although the court made references during the colloquy both to Hunt's right to testify and his right not to testify. Hunt then told the court that he wanted to testify. However, ultimately, Hunt decided not to testify, after which the court did not conduct a separate colloquy on the waiver of the right to testify. Because Hunt's ultimate decision was to waive the right to testify, we conclude that the type of waiver at issue is the waiver of the right to testify. Therefore, our analysis will focus on whether Hunt's decision not to testify was knowing, intelligent, and voluntary. This approach is in keeping with Hunt's primary argument, which is that his ultimate decision not to testify was not knowing, intelligent, and voluntary because he was coerced not to testify after he had initially decided to testify.

¶14 As we have indicated, a criminal defendant has the right to testify and the right not to testify. *See* ***Denson***, 335 Wis. 2d 681, ¶49; *see also* ***Harris v. New York***, 401 U.S. 222, 225 (1971). The right of a defendant to testify is considered to be a corollary right to a defendant's right not to testify. *See* ***Denson***, 335 Wis. 2d 681, ¶55; *see also* ***Rock v. Arkansas***, 483 U.S. 44, 51-53 (1987). Both the right to testify and the right not to testify are fundamental constitutional

rights under the United States Constitution and the Wisconsin Constitution. ***Denson***, 335 Wis. 2d 681, ¶¶49-55; ***Rock***, 483 U.S. at 53 n.10. We observe that the waiver of one fundamental right necessarily invokes the exercise of the corollary right.

¶15 Hunt argues that his waiver of the right to testify was not knowing, intelligent, and voluntary because: (1) the court conducted a defective colloquy; (2) the circuit court, the prosecutor, and defense counsel engaged in tactics that coerced Hunt to waive the right to testify; and (3) defense counsel provided ineffective assistance, which also coerced Hunt to waive the right to testify. In a separate argument, Hunt argues the court conducted an improper suppression hearing. Based on the above errors, Hunt argues he is entitled to an evidentiary hearing. We address and reject each argument in turn.

A. Waiver Colloquy

¶16 Because we must determine whether Hunt's ultimate decision to waive the right to testify was knowing, intelligent, and voluntary, we begin by summarizing the requirements of ***State v. Weed***, 2003 WI 85, 263 Wis. 2d 434, 666 N.W.2d 485. Under ***Weed***, when a defendant decides to waive the right to testify, a circuit court must conduct an on-the-record colloquy to ensure that the defendant's waiver of the right to testify is knowing, intelligent, and voluntary. ***Id.***, ¶¶40-41. "The colloquy should consist of a basic inquiry to ensure that (1) the defendant is aware of his or her right to testify and (2) the defendant has discussed this right with his or her counsel." ***Id.***, ¶43. "[T]he colloquy should be a simple and straightforward exchange between the court and the defendant outside the presence of the jury." ***Id.***, ¶41.

¶17 Hunt argues that his waiver of the right to testify was not knowing, intelligent, and voluntary because the court's waiver colloquy was defective. Hunt asserts that the waiver colloquy exceeded the scope of a permissible waiver colloquy under ***Weed***. According to Hunt, the court's colloquy "violated the 'simple and straightforward' colloquy mandated by" ***Weed***. Consequently, Hunt argues, he is entitled to an evidentiary hearing to establish that his waiver of the right to testify was not knowing, intelligent, and voluntary.[2] We disagree.

¶18 We do not read ***Weed*** as purporting to establish a rigid rule on the proper method of conducting the colloquy on the waiver of the right to testify. Indeed, the court in ***Weed*** simply advises that the colloquy consist of a "basic inquiry" to ensure that the defendant knowingly and voluntarily waives the right to testify, with no specific limitations on what "basic" or "simple and straightforward" mean. We note that the Wisconsin Criminal Jury Instructions Committee provides a series of suggested questions that a court may ask a defendant and defense counsel to ensure the waiver of the right to testify is knowing, intelligent, and voluntary. WIS JI—CRIMINAL SM-28. However, the jury instructions committee's comments make clear that the sample questions provided there are only suggestions, and not requirements. ***Id.*** at 3. As with plea

[2] Hunt appears to argue that he is entitled to a ***Bangert***-type hearing because he has properly raised the issue of whether the court conducted a defective colloquy in a postconviction motion. *See* ***State v. Bangert***, 131 Wis. 2d 246, 274-75, 389 N.W.2d 12 (1986) (establishing the requirements for an evidentiary hearing on a guilty plea waiver). We disagree. Hunt is entitled to a ***Bangert***-type hearing only if Hunt raises the issue in a postconviction motion *and* an examination of the record demonstrates that the colloquy was defective, and we see nothing in the record to suggest that the court conducted a defective colloquy. *See* ***State v. Cross***, 2010 WI 70, ¶19, 326 Wis. 2d 492, 786 N.W.2d 64 (providing that a defendant is entitled to an evidentiary hearing on a guilty plea waiver only when the defendant points to a deficiency in the plea hearing transcript that shows that the circuit court violated a mandated duty and the defendant alleges that he or she did not know or understand the information that should have been provided at the plea hearing).

colloquies, courts must have the flexibility when conducting a waiver colloquy to allow the opportunity for defendants to ask follow-up questions, as was the case here, and to afford the court an opportunity to explain in greater depth the constitutional rights at issue and the consequences of waiving those rights to ensure that the decision on whether to testify is knowing, intelligent, and voluntary. *See* ***State v. Hoppe***, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 ("[W]e do not require a circuit court to follow inflexible guidelines when conducting a plea hearing.").

¶19 Turning to the circuit court's colloquy, the circuit court conducted an on-the-record colloquy to ensure that Hunt knowingly, intelligently, and voluntarily waived his right to testify. Based on our review of that part of the trial transcript at issue here, we conclude that the circuit court conducted an adequate colloquy to ensure that Hunt rendered a knowing, intelligent, and voluntary decision on whether to testify.[3] In other words, the court met both requirements of the waiver colloquy by ensuring that Hunt was aware of his right to testify and discussed that right with defense counsel. *See* ***Weed***, 263 Wis. 2d 434, ¶43. Our conclusion is supported by portions of the court's colloquy that include the following:

> THE COURT: … You have two choices at this point when your case starts in a few minutes. You can testify or you can refrain, you can decide not to testify and

[3] It appears that Hunt believes the waiver colloquy included the exchanges among the circuit court, the prosecutor, and defense counsel regarding evidentiary matters. We disagree. The discussion of evidentiary matters that Hunt complains about was separate from the court's colloquy. Nonetheless, even if the colloquy could reasonably be viewed as including these exchanges, as we will explain, it appears that the prosecutor was seeking clarification from the court regarding what evidence the State might be able to use to impeach Hunt if he testified. Hunt's characterization of these exchanges as "threats" by the prosecutor to introduce damaging evidence with the purpose of dissuading Hunt from testifying finds no support in the record.

> it's your decision.… Certainly, you are well-advised to listen carefully to the advice of [defense counsel], but ultimately, it's not his decision, it's yours and you can overrule him. [The court then explains the possible consequences of testifying.]
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> ….
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> THE COURT: All right. Mr. Hunt, have you had enough time to discuss this matter with your lawyer?
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> MR. HUNT: Yes.
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> THE COURT: Have you had enough time to think about what you're doing?
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> MR. HUNT: Yes.
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> THE COURT: Do you think what you're doing is the best thing under all the circumstances?
>
> MR. HUNT: Yes.

We are satisfied that the colloquy conducted by the circuit court fulfilled the requirements that ***Weed*** established for conducting an adequate waiver colloquy.

B. Coercion

¶20 In an overlapping argument, Hunt argues that "a combination of judicial error, prosecutorial tactics, and his trial counsel's performance rendered his waiver of the right to testify unknowing and involuntary." Stated differently, Hunt contends that he was coerced to waive the right to testify based on the discussions among the circuit court, the prosecutor, and defense counsel regarding evidence the prosecutor was seeking to admit that could impeach Hunt's credibility.[4] He also contends that defense counsel's ineffectiveness left him with

[4] In his supplemental brief on appeal, Hunt appears to argue that he is entitled to a ***Nelson/Bentley***-type hearing because he alleges in his postconviction motion sufficient facts that, if proven true, would entitle him to relief. *See* ***Nelson v. State***, 54 Wis. 2d 489, 497, 195 N.W.2d 629 (1972); ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). It is not readily (continued)

no alternative but to waive the right to testify. We consider first Hunt's argument that he was coerced by the circuit court and the prosecutor, and then consider Hunt's ineffectiveness of trial counsel claim separately.

¶21 Hunt argues the circuit court and the prosecutor coerced him to waive his right to testify based on exchanges regarding evidentiary matters. We begin by observing that Hunt's arguments are conclusory and that he fails to explain why or how he was coerced to waive the right to testify by any of the exchanges. Moreover, it appears that these exchanges, at least on their face, were attempts by the State to clarify what evidence it might be able to use to impeach Hunt if he testified, and Hunt does not provide us with a basis to conclude that this apparent purpose was a mere pretext to "coerce" him not to testify.

¶22 Turning first to the exchange concerning whether Hunt would be barred from testifying about alleged police brutality in this case, we observe that this exchange occurred in part because Hunt asked the court during the waiver

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apparent to which allegations Hunt is referring. In his supplemental brief, Hunt argues he is entitled to such a hearing "because he supports his claims with post-conviction allegations not apparent from the record," and immediately thereafter refers to allegations in his postconviction motion that "a combination of judicial error, prosecutorial tactics, and his trial counsel's performance rendered his waiver of the right to testify unknowing and involuntary." However, an evidentiary hearing is not required to resolve whether Hunt was coerced to waive the right to testify for the reasons he alleges; rather, the trial transcript provides all of the evidence we need to resolve this issue.

Hunt also asserts in conclusory fashion in his brief that there is nothing in the record that "definitively establishes what Mr. Hunt discussed with his trial counsel … or the extent of trial counsel's investigation into the other acts evidence that the prosecutor threatened to disclose to the jury if Mr. Hunt testified." The problem with this assertion is that it is unsupported by an offer of proof and Hunt does not present a fully developed argument on this topic. As the movant, Hunt has the burden of providing an offer of proof regarding what happened during the conversations with defense counsel that allegedly coerced Hunt to waive the right to testify. Accordingly, we conclude that Hunt has not shown that he is entitled to a ***Nelson/Bentley***-type hearing based on his allegations that he was coerced to waive the right to testify.

colloquy whether he would be allowed to testify about his police brutality allegations. In response, the court indicated to Hunt that this testimony might be allowed if Hunt were able to establish that the excessive force occurred prior to Hunt's inculpatory statements to the police. Hunt has not explained why or how this ruling coerced him.

¶23 Regarding the exchange concerning the stipulation on the number of Hunt's prior convictions that would be disclosed to the jury, it is routine at criminal trials to determine the number of prior convictions that are admissible for impeachment purposes prior to when the defendant is called to testify. *See* WIS. STAT. § 906.09(1) (2011-12)[5]; ***State v. Kruzycki***, 192 Wis. 2d 509, 524-25, 531 N.W.2d 429 (Ct. App. 1995). Hunt does not explain how or why he was coerced by this exchange.

¶24 As for the exchange concerning whether the prosecutor could seek to introduce evidence that Hunt made an unsubstantiated claim of police brutality in 1984, we note that Hunt's claim that the prosecutor was incorrect in stating that Hunt made an unsubstantiated claim of police brutality in 1984 is based on a falsehood. Hunt contends in his postconviction motion and on appeal that he recovered a civil judgment stemming from his claim that the police used excessive force in connection with his arrest for the 1984 armed robbery and murder of a gas station clerk and that the prosecutor had no evidence to support his representation to the court that he had obtained information from an Illinois prosecutor that Hunt had falsely claimed police brutality in connection with that case. However, a

[5] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

reported federal court of appeals opinion reveals that Hunt did not prevail on his 1984 civil claim of police brutality, and therefore, the prosecutor was correct that Hunt made an unsubstantiated claim of police brutality. *See* ***Hunt v. Jaglowski***, 926 F.2d 689, 690 (7th Cir. 1991) (providing that Hunt filed a civil rights complaint alleging that the police used excessive force against him during his 1984 arrest and the jury returned a verdict finding against him on that claim).[6] Hunt obviously knew at the trial in this case, and on appeal, that he did not prevail in his 1984 civil action, and it was false to assert that he did prevail.

¶25 Turning next to the exchange concerning whether the prosecutor could seek to introduce evidence that Hunt used a gun during the 1984 armed robbery and murder of a gas station clerk, we understand Hunt to be arguing that the court dissuaded him from testifying by indicating that there was a "substantial" chance that the prosecutor would be allowed to introduce this evidence. We are not persuaded. As we have noted, the court backtracked from its initial statement that there was a "substantial" chance the State would be allowed to introduce evidence related to the 1984 crimes by later stating that there was only "a chance" the State would be allowed to introduce the evidence. In addition, the court declined to make an evidentiary ruling on that issue. It is common practice for a court to discuss during a jury trial evidentiary matters that might arise in the trial, but then decline to make evidentiary rulings until the court has heard the testimony, as the court did here.

[6] We believe that, at a minimum, Hunt's appellate counsel should have known that Hunt was falsely claiming that he recovered a civil judgment based on police brutality in 1984. Counsel had a reasonable opportunity to conduct the most basic research regarding this matter and it is not apparent to us that he did. If he had, counsel would have discovered, as we did, that Hunt did not prevail on his 1984 claim of police brutality and brought that fact to our attention. *See* ***Hunt v. Jaglowski***, 926 F.2d 689, 690 (7th Cir. 1991).

¶26 At bottom, we see nothing in how the exchange unfolded that leads us to believe that the prosecutor or the court intended to dissuade Hunt from testifying or that it would be reasonable to conclude that a person in Hunt's position would have felt coerced to waive the right to testify. The exchanges that Hunt relies on in support of his position that he was coerced to waive the right to testify are typical of the exchanges that take place during a jury trial. None of the exchanges could be reasonably viewed as misleading, inaccurate, or confusing. That one or more of the exchanges might have played a significant role in Hunt's decision not to testify certainly appears possible from the record. However, that does not represent proof of "coercion." Stated differently, the fact that one or more of these exchanges may have persuaded Hunt not to testify does not demonstrate that Hunt was "coerced" not to testify. We therefore conclude that the record does not support Hunt's contention that the exchange among the court, the prosecutor, and defense counsel coerced him to waive the right to testify.[7]

¶27 We turn now to Hunt's argument that he received ineffective assistance of counsel, which led him to believe that he had no alternative but to waive the right to testify.

¶28 To succeed on a claim of ineffective assistance of counsel, Hunt must demonstrate that counsel's representation was deficient and that the deficiency prejudiced him. *See* ***State v. Erickson***, 227 Wis. 2d 758, 768, 596 N.W.2d 749 (1999). To prove deficient performance, Hunt must show that, under

[7] The State and Hunt dispute whether harmless error analysis would apply in a case where the defendant claims that he or she was coerced to waive the right to testify. Because we conclude that Hunt has failed to establish that he was coerced to waive the right to testify, we do not address that issue. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (only dispositive arguments need to be addressed).

all of the circumstances, counsel's specific acts or omissions fell "outside the wide range of professionally competent assistance." ***Strickland v. Washington***, 466 U.S. 668, 690 (1984). To prove prejudice, Hunt must establish a reasonable probability that, "but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** at 694.

¶29 Hunt contends that defense counsel provided ineffective assistance and, by doing so, coerced Hunt to waive the right to testify. Hunt alleges in his postconviction motion that defense counsel was ineffective in three ways: (1) counsel failed to read all of the trial transcripts from the Waukegan case; (2) counsel "lacked adequate information to challenge the prosecutor when he falsely informed the court that Mr. Hunt's sister and wife had testified in Illinois"; and (3) counsel lacked sufficient information to rebut the prosecutor's "false claims that the federal courts had adjudicated adversely to Mr. Hunt[ʻs] lawsuit alleging police brutality" in the 1984 case. None of these arguments have merit.

¶30 We first observe that Hunt has not presented a fully developed argument to support any of his claims that defense counsel was ineffective. In any event, as to the first claim, Hunt has not shown that, had counsel read all of the Waukegan trial transcripts, the result of the proceeding would have been different. Defense counsel knew that Hunt had been found guilty of the Waukegan armed robbery, and Hunt does not explain what the trial transcripts would have revealed to defense counsel had he read them that would have changed the result of the proceeding.

¶31 As to Hunt's second ground for arguing defense counsel was ineffective, Hunt does not develop any argument on this topic. We therefore do

not address it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶32 As to the third ground, as we have explained, a reasonable investigation into this matter would have revealed to defense counsel that Hunt did not prevail on his 1984 claim of police brutality. *See* ***Jaglowski***, 926 F.2d at 690. Thus, even if defense counsel was deficient in failing to familiarize himself with the circumstances surrounding the 1984 convictions, counsel would have had no basis to dispute the prosecutor's assertion that Hunt made a claim of police brutality related to that case on which he did not prevail in federal court.

¶33 In sum, Hunt fails to show that defense counsel was ineffective and therefore we reject his assertion that counsel's ineffectiveness left him with no alternative but to waive the right to testify.

C. Suppression Hearing

¶34 Finally, Hunt contends that the suppression hearing was not "sufficiently coherent" because the court failed to hold the hearing prior to trial and instead held the hearing during breaks throughout the trial. We decline to address that argument because it is not fully developed, and Hunt cites to no legal authority supporting his apparent position that a court is required to hold the suppression hearing prior to trial and not during breaks at the trial.

¶35 In addition, Hunt requests an evidentiary hearing because, at the suppression hearing, the court indicated that it would not accept Hunt's contention that the police had used excessive force in this case unless it was corroborated by other evidence. Hunt contends that he is in possession of photographs that would corroborate his claim of police brutality here. We reject Hunt's request for an

evidentiary hearing. The photographs were not offered into the record by way of offer of proof, and consequently, we are unable to assess whether the photographs could have been reasonably viewed as corroborating Hunt's allegation that the police used excessive force while interrogating him.

CONCLUSION

¶36 Based on the foregoing reasons, we affirm the judgment of conviction and order denying Hunt's motion for postconviction relief.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.