COURT OF APPEALS
DECISION
DATED AND FILED

November 29, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1400-CR **Cir. Ct. No. 2012CF472**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON ROVELL DODD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: GLENN H. YAMAHIRO and WILLIAM S. POCAN, Judges. *Affirmed*.

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

¶1 PER CURIAM. Jason Rovell Dodd appeals from a judgment of conviction for armed robbery with threat of force as a party to a crime. *See* WIS. STAT. §§ 943.32(2) & 939.05 (2011-12).[1] He also appeals from an order denying, in part, his postconviction motion.[2] Because exculpatory evidence was not withheld from the defense and because Dodd's trial counsel was not ineffective, we affirm.[3]

BACKGROUND

¶2 A jury found Dodd guilty of armed robbery for his role in a crime committed in April 2011 at an auto parts store.

¶3 According to the trial testimony, a man entered the auto parts store wearing latex gloves and sunglasses. He was armed with a gun and demanded money. Two employees of the store, J.S. and H.P., were present at the time. The incident was captured on video.[4]

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] The Honorable Glenn H. Yamahiro presided over Dodd's jury trial and entered the judgment of conviction. The Honorable William S. Pocan entered the order granting Dodd's postconviction motion in part, denying it in part, and amending the judgment of conviction to vacate the DNA surcharge and sentence credit.

[3] In his statement of the issues, Dodd includes whether he is entitled to a new trial in the interest of justice. However, he did not brief the issue. Therefore, we will not address it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (the court of appeals need not address the merits of inadequately briefed issues).

[4] The transcripts make clear that a video was played; however, the video itself is not in the appellate record.

¶4 J.S. and H.P. testified that the man who robbed the store fled in a green SUV waiting outside. J.S. was able to write down the license plate number along with the make and model.

¶5 Police subsequently stopped a green SUV based on the identifying information provided by J.S. They arrested the driver, Robert Jackson.

¶6 A consent search of Jackson's cell phone showed contact information for "Jason." At trial, the State was able to connect Dodd to the cell phone number that appeared on Jackson's phone and presented evidence that there were a multitude of calls between Dodd and Jackson before the robbery but not during the time captured on the store's security cameras.

¶7 H.P. testified that he found gloves on the floor behind the counter at the store immediately after the robber left. The gloves appeared to be the same as the ones the robber had been wearing. H.P. picked up the gloves and placed them in the garbage. Later, H.P. saw police remove the gloves from the garbage.

¶8 Dodd was identified when the gloves left at the store revealed his DNA. In a police photo array, J.S. identified Dodd as the man wearing sunglasses who robbed him. J.S. also identified Dodd at trial as the person responsible for the crime.

¶9 Following his conviction, Dodd was sentenced to twelve years of initial confinement and eight years of extended supervision. His motion for postconviction relief was denied.

¶10 Additional background information related to Dodd's appellate claims is included below.

DISCUSSION

¶11 On appeal, Dodd argues that the State withheld exculpatory evidence from him. Specifically, he claims the State withheld a search log of Jackson's truck and additional video from the auto parts store. He also asserts that the State belatedly disclosed DNA test results. Dodd further contends that his trial counsel was ineffective for not obtaining the exculpatory evidence and for failing to challenge the chain of custody regarding the DNA evidence on the latex gloves, for failing to impeach H.P. with his prior convictions, for failing to suppress a photo array in which J.P. identified Dodd, for failing to investigate alleged alibi witnesses, and for failing to argue at his sentencing hearing. We will address each of Dodd's various claims in turn.

(1) *Exculpatory Evidence*

¶12 Pursuant to ***Brady*** and its progeny, the State must disclose evidence that is favorable to an accused, and the failure to do so violates due process.[5] *See* ***State v. Harris***, 2004 WI 64, ¶12, 272 Wis. 2d 80, 680 N.W.2d 737; *see also* WIS. STAT. § 971.23(1)(h) (The State is required to disclose "[a]ny exculpatory evidence" to the defense.). "Evidence is favorable to an accused, when, 'if disclosed and used effectively, it may make the difference between conviction and acquittal.'" ***Harris***, 272 Wis. 2d 80, ¶12 (citation omitted). A defendant has the burden to establish a violation of the State's obligations under ***Brady***. *See* ***Harris***, 272 Wis. 2d 80, ¶13.

[5] *See* ***Brady v. Maryland***, 373 U.S. 83, 87 (1963).

¶13 To establish a ***Brady*** violation, a defendant must show that the State withheld evidence that is not only favorable to him but also material to the case. *See* ***Harris***, 272 Wis. 2d 80, ¶13. "'The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome.'" ***Id.***, ¶14 (citation omitted).

¶14 We review *de novo* whether the facts of a case establish a ***Brady*** violation. *See* ***State v. Rockette***, 2006 WI App 103, ¶39, 294 Wis. 2d 611, 718 N.W.2d 269. We will address each of Dodd's exculpatory evidence claims in turn.

(a) Search Logs and Reports

¶15 Dodd asserts that he is entitled to a new trial based on the State's failure to turn over reports detailing the items retrieved during the search of Jackson's vehicle. According to Dodd, "[t]hose logs and reports pertaining to the search contain *potentially* exculpatory evidence which would have an impact on this case, if available to Dodd at trial." (Emphasis added.)

¶16 Dodd directs us to inconsistent testimony provided by the police as to whether any items of evidentiary value were uncovered from the search of the vehicle. Officer Blaine Grabowski testified that he was involved in the stop and search of the green SUV and stated that nothing was discovered.

¶17 Officer Timothy Bandt testified that he also was involved in the search for the green SUV. Upon hearing that the SUV had been stopped, Officer Bandt went to the location and saw Jackson and another individual outside of the

vehicle. When questioned as to whether he searched the vehicle, Officer Bandt testified: "I may have looked in it. Did I do the search of the vehicle? No."

¶18 Officer Bandt testified that *he was told* there were latex gloves in the SUV. He acknowledged, however, that he did not complete an inventory regarding the vehicle and was unaware whether any gloves from the vehicle were, in fact, inventoried. Detective Michael Koscielak, who took part in the investigation, testified that the first time he heard about gloves being found in Jackson's vehicle was during Officer Bandt's trial testimony.

¶19 Dodd argues the State had a duty to disclose the conflicting information it had from Officer Grabowski and Officer Bandt. By keeping it from him, Dodd claims he "lacked the opportunity to investigate the existence of any evidence discovered from Jackson's vehicle or fully cross[-]examine both officers regarding these issues."

¶20 Dodd speculates about the existence of the reports and logs and what they might have revealed. Here, the criminal complaint states that money and a cell phone were found on Jackson's person. There is no indication that anything of note was discovered in the SUV. ***Brady*** requires production of information by the State only when that information is within the exclusive possession of State authorities. *See* ***State v. Sarinske***, 91 Wis. 2d 14, 36, 280 N.W.2d 725 (1979). Dodd has not shown that this condition has been met. Speculation is insufficient to support a claimed ***Brady*** violation.

¶21 Dodd's trial counsel cross-examined both officers and argued the fact that one of the officers believed gloves were found in Jackson's vehicle to the jury. Insofar as there was inconsistency between the officers' testimony, the jury heard the discrepancy and was able to make its own determination as to whether

Officer Brandt misspoke or misremembered what he heard from someone else. It is not our function to resolve conflicts in the testimony, weigh the evidence, or draw reasonable inferences from basic facts to ultimate facts; those duties belong to the trier of fact. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990).

(b) Late Disclosure of DNA Testing Information

¶22 Next, Dodd objects to the late disclosure of the DNA testing information, which he contends was not provided by the State until the time of trial. He submits that the late disclosure impeded his trial counsel's ability to impeach witnesses regarding the handling and testing of the latex gloves found at the crime scene, which resulted in ineffective assistance.

¶23 First, Dodd has not established that there was, in fact, a late disclosure of the DNA testing information. The packet apparently was available to Dodd's trial counsel several weeks before trial.[6] Second, even if the DNA testing information was disclosed late, Dodd has not shown that it was favorable to him or that the result of the trial would have been different if it had been disclosed earlier. *See* ***Harris***, 272 Wis. 2d 80, ¶¶12-13.

¶24 The DNA report is inculpatory—it identified Dodd's DNA as the major contributor to DNA found on glove A-1, as well as a contributor to DNA

[6] In his reply brief, Dodd seemingly concedes that the DNA testing information was timely disclosed. He then takes a new tack and focuses on his trial counsel's failure to review the material prior to trial. He emphasizes the varying descriptions of the latex gloves that were found at the auto parts store—cream colored with dirt on the exterior or white and whether they were inside out. According to Dodd, there is strong evidence to suggest that the gloves that were tested at the crime lab were not the same ones that were found at the auto parts store. We will address this facet of Dodd's argument in more detail later in this decision.

found on glove A-2. Earlier receipt of the DNA report would not have made a difference in the outcome of Dodd's trial. *See* ***id.***, ¶14.

(c) Failure to Turn Over Entire Surveillance Video

¶25 Dodd argues that the State failed to turn over the entire surveillance video available from the auto parts store. He submits that the police determined which portions to provide to him and that footage of the area where H.P. found the latex gloves and threw them into the garbage was omitted. *See* ***California v. Trombetta***, 467 U.S. 479 (1984) (extending ***Brady*** rule to evidence which is lost or destroyed).

¶26 Trial transcripts reveal that the video recording presented to the jury was from the store security system, which is activated by motion. The video—which is not in the appellate record—purportedly shows the robber, who is wearing latex gloves, pointing a gun at J.S. While being questioned by the prosecutor, J.S. testified as follows regarding the video:

> A … Later on you will see that the latex gloves are in that trash can right there.
>
> Q We are talking about these gloves here?
>
> A Yes.
>
> Q Do you know how they got in the trash can?
>
> A H[.P.] threw them in there.
>
> Q Did you see that happen?
>
> A I did not see that happen.
>
> Q Did you talk to him?
>
> A I did.
>
> ….

> Q But that was your understanding. Who gave those to the police?
>
> A I believe H[.P.] did.

¶27 H.P., however, testified that there was no video of him picking up latex gloves and placing them into a trash can, noting "it's just short of that camera view."

¶28 Regarding the surveillance, Dodd's trial counsel questioned Detective Koscielak:

> Q And [H.P.] is the one who found the—or you've heard found the gloves, correct?
>
> A That's correct.
>
> Q Do you know, did anybody ever look to see if there was any video of those gloves being on the ground where he said that he found them?
>
> A I was told that the only video we had, that that wasn't the case.

¶29 Dodd has not shown that the footage he seeks ever existed, let alone that it was in the exclusive possession of the State. *See* ***Sarinske***, 91 Wis. 2d at 36. And, even if such video did exist, it is unclear how it would be exculpatory given the trial testimony related to the unrefuted video showing a man, later identified as Dodd, committing an armed robbery.

(2) *Ineffective Assistance*

¶30 We now turn to Dodd's claims of trial counsel ineffectiveness. To prove a claim of ineffective assistance of counsel, a defendant must show that his lawyer performed deficiently and that this deficient performance prejudiced him. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). The test for deficient performance is whether counsel's representation fell below objective standards of

reasonableness. ***State v. Carter***, 2010 WI 40, ¶22, 324 Wis. 2d 640, 782 N.W.2d 695. To show prejudice, "the defendant must show that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" ***Id.***, ¶37 (citation omitted). A reviewing court may dispose of a claim of ineffective assistance of counsel on either ground. ***Strickland***, 466 U.S. at 697. Whether a lawyer's conduct was deficient and whether the defendant was prejudiced by his lawyer's deficient actions are questions of law. ***State v. Nielsen***, 2001 WI App 192, ¶14, 247 Wis. 2d 466, 634 N.W.2d 325.

A. DNA Evidence

¶31 Dodd claims trial counsel was ineffective for not objecting to the admission of DNA evidence at trial. He argues the State did not properly demonstrate the chain of custody for the latex gloves.

¶32 The State needed to authenticate and identify the gloves with "evidence sufficient to support a finding that the matter in question is what its proponent claims." *See* WIS. STAT. § 909.01. The law with respect to chain of custody requires proof sufficient "to render it improbable that the original item has been exchanged, contaminated or tampered with." ***B.A.C. v. T.L.G.***, 135 Wis. 2d 280, 290, 400 N.W.2d 48 (Ct. App. 1986). "A perfect chain of custody is not required." ***State v. McCoy***, 2007 WI App 15, ¶9, 298 Wis. 2d 523, 728 N.W.2d 54. "Alleged gaps in a chain of custody 'go to the weight of the evidence rather than its admissibility.'" ***Id.*** (citation omitted).

¶33 Here, there was nothing to attack because the testimony was uncontroverted by H.P. that he picked up the gloves and placed them in the garbage. J.S. similarly testified that he and H.S. saw gloves on the floor

immediately after the robbery occurred. Officer Robert Crawley testified that he worked to preserve the crime scene and that H.S. directed him to the gloves in the garbage. After the ID technician finished with the gloves, Officer Crawley placed the gloves in inventory with an identifying number. Margaret Cairo, a DNA analyst with the Wisconsin State Crime Lab, testified that she swabbed both sides of the gloves and found the DNA match to Dodd.

¶34 According to Dodd, the record is unclear as to what part of the gloves actually contained the DNA evidence. He claims there was confusion at trial as to whether the gloves were "inside out" when they were received at the crime lab.

¶35 First, it makes no difference how the gloves arrived given Cairo's testimony that she swabbed both the inside and outside of both gloves before attempting to secure a DNA match. Insofar as Dodd is challenging the chain of custody more generally, as noted above, a perfect chain is not required. *See* ***id.***, ¶9. Dodd's trial counsel did not perform deficiently for not objecting. *See* ***State v. Toliver***, 187 Wis. 2d 346, 360, 523 N.W.2d 113 (Ct. App. 1994) ("trial counsel was not ineffective for failing or refusing to pursue feckless arguments"). Additionally, we agree with the trial court's conclusion that Dodd's claim in this regard is speculative given that there is no showing that the gloves were contaminated or tampered with in any way. "A showing of prejudice requires more than speculation." ***State v. Wirts***, 176 Wis. 2d 174, 187, 500 N.W.2d 317 (Ct. App. 1993).

B. Prior Convictions

¶36 Next, Dodd faults his trial counsel for failing to ask H.P. about his prior convictions. Dodd asserts that H.P.'s credibility was a critical issue and the failure to impeach H.P. prejudiced Dodd's defense. We are not convinced.

¶37 H.P. was a disinterested witness who had no stake in the trial's outcome and no connection to Dodd. At the time of trial, he no longer worked at the auto parts store. H.P.'s testimony was consistent with that of J.S.

¶38 Again, we are in agreement with the trial court's reasoning: "The record is devoid of any motive [H.P.] might have had to lie, and he testified about a simple series of events." The trial court continued: "His credibility as the person who first located the gloves, put them in the trash, and showed them to police would not have been affected if he had testified that he had three criminal convictions." Even if H.S. had been impeached, Dodd has not shown a reasonable probability that the outcome of his trial would have been different. *See* ***Carter***, 324 Wis. 2d 640, ¶37.

C. Cell Phone Records

¶39 Dodd argues that his trial counsel was ineffective for failing to object when cell phone records, which he contends were hearsay, were admitted to show that he made calls to Jackson on the date the crime was committed. According to Dodd, the admission of these records violated his constitutional right of confrontation.

¶40 The confrontation clause "bars 'admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.'" ***Davis v.***

Washington, 547 U.S. 813, 821 (2006) (citation omitted). A threshold question in a confrontation clause case "is whether the State is proffering 'testimonial' hearsay evidence." ***State v. Hale***, 2005 WI 7, ¶53, 277 Wis. 2d 593, 691 N.W.2d 637. Only testimonial statements "cause the declarant to be a 'witness' within the meaning of the Confrontation Clause." ***Davis***, 547 U.S. at 821. "'Testimony'" has been defined as "'[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact.'" ***Crawford v. Washington***, 541 U.S. 36, 51 (2004) (citation omitted).

¶41 Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." WIS. STAT. § 908.01(3). While a trial court's decision to admit evidence is generally left to that court's discretion, we independently review whether that evidence violates the confrontation clause. *See* ***Hale***, 277 Wis. 2d 593, ¶41.

¶42 The phone records in this case were not hearsay in that they were not a testimonial statement offered by a witness. There is no indication in the record that the content of the cell phone records was revealed—only the number, which the State subsequently linked to Dodd, and the frequency of calls.[7] Detective Richard McKee's testimony related to his examination of the phone and records he personally examined.

[7] Dodd attached some of the records related to Jackson's cell phone to his postconviction motion. The actual trial exhibits were not, however, included in the appellate record. It is Dodd's responsibility to ensure the appellate record is complete. *See* ***State v. McAttee***, 2001 WI App 262, ¶5 n.1, 248 Wis. 2d 865, 637 N.W.2d 774. "[W]hen an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling." ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993).

¶43 Specifically, Detective McKee testified as to information he extracted from Jackson's phone using a software program. The information that was extracted consisted of contact lists and stored images. Of the contacts, one identified as "Jason" stood out to Detective McKee. On the day of the robbery, contact between Jackson's phone and Jason's phone number took place thirty-three times in a six-hour period. There was a break in calls between the two phones during the time when the robbery was committed. Detective McKee then testified to various screen shots related to the thirty-three call records. As summed up by the State, the phone records at issue were "simply pieces of evidence connected up by multiple witnesses for the State that allowed it to later argue that the Jason in Jackson's phone was Dodd." The confrontation clause is not implicated; consequently, Dodd's trial counsel did not perform deficiently for not objecting. *See* ***Toliver***, 187 Wis. 2d at 360.

D. Failure to Suppress Out-of-Court Identification

¶44 Next, Dodd argues that the out-of-court photo array where J.S. identified him was impermissibly suggestive and his trial counsel was ineffective for failing to have it suppressed. He asserts that he was the only individual whose teeth were showing in the array, which is significant because he has gold teeth. Dodd submits that J.S.'s in-court identification of him was based upon this improper out-of-court identification.

¶45 With his postconviction motion, Dodd submitted an affidavit from his postconviction investigator. According to the investigator, J.S. reported that his identification of Dodd was based, in part, on his observation of Dodd's teeth. J.S. further told the investigator that he did not provide that information to police or testify to it at trial "because he was concerned that he would appear racist." In

its decision, the trial court noted that it was unclear when J.S. relayed the information to the investigator. The investigator stated he was retained with regard to postconviction litigation, and the trial itself took place more than two years after the robbery.

¶46 The standard for the admissibility of identification based on photo arrays is as follows: "First, the defendant has the burden to demonstrate the out-of-court photo identification was impermissibly suggestive; if the defendant meets this burden, the State has the burden to show that the identification is nonetheless reliable under the totality of the circumstances." *See* ***State v. Drew***, 2007 WI App 213, ¶13, 305 Wis. 2d 641, 740 N.W.2d 404. Unnecessary suggestiveness may result from some feature that tends to unduly emphasize the suspect, from the manner in which the persons are presented, or from the words or actions of the law enforcement officers overseeing the viewing. *See* ***Powell v. State***, 86 Wis. 2d 51, 63, 271 N.W.2d 610 (1978).

¶47 In its decision denying Dodd's postconviction motion, the trial court acknowledged that Dodd's was the only photo showing teeth but explained that only a small portion of his teeth were visible and that it was not immediately apparent that they were gold. Additionally, the trial court pointed out that there is nothing in the record to suggest that J.S. mentioned Dodd's teeth to police.

¶48 Detective Koscielak testified as to his process in putting together the photo array that included Dodd. He explained that he followed the procedures in place for generating a photo array—which included refining the matches generated by a computer program to better resemble Dodd's skin color, height, and weight. He placed each photo into its own manila folder, showed each folder individually to J.S., and inserted two folders containing blank paper at the end of the process.

At trial, Detective Koscielak did not recall having information that Dodd has gold teeth.

¶49 J.S. identified Dodd following a second viewing of the photo array in August 2011 where Dodd's was the second photograph shown to him and before he had an opportunity to view the four other filler photos. Therefore, J.S. had no way of knowing which, if any, of the remaining photos, showed individuals with similar teeth and could not have chosen Dodd because his was the only photo to do so.

¶50 Dodd has not met his burden to demonstrate that the out-of-court photo identification was impermissibly suggestive; consequently, no basis exists for determining that the in-court identification was impermissibly tainted by it. Dodd's trial counsel did not perform deficiently for not moving to suppress the out-of-court identification as such a motion would have failed. *See* ***State v. Cummings***, 199 Wis. 2d 721, 747 n.10, 546 N.W.2d 406 (1996) (noting that it is well-established that an attorney's failure to pursue a meritless motion does not constitute deficient performance).

E. Failure to Impeach Witnesses

¶51 Dodd claims his trial counsel was ineffective for failing to impeach Margaret Cairo as to inconsistencies regarding the description of the latex gloves that she analyzed. He references the report of a non-testifying analyst, Sherrea A. Herod, which indicated that the gloves were cream-colored.[8] The description is

[8] Dodd notes in passing that his right to confrontation was violated when Herod did not testify, and he contends that the DNA evidence should have been suppressed. This issue is inadequately briefed, and we will not discuss it further. *See* ***Pettit***, 171 Wis. 2d at 646.

important, Dodd argues, given that the police inventory indicates that the gloves were white in color. Additionally, Dodd claims "[t]here were … concerns regarding whether or not the interior or exterior of said gloves were tested for DNA."

¶52 Dodd's trial counsel did not perform deficiently in failing to explore the slightly differing descriptions as to the color of the gloves. First, the gloves were authenticated by multiple witnesses and processes before the jury, and there would be no benefit to emphasizing the slightly varying descriptions. Second, regarding the inside-out/outside-in nature of the gloves, as previously set forth in this decision, the chain-of-custody related to the gloves was established, and Cairo testified that she swabbed all parts of the gloves, not just one side or the other. Therefore, it makes no difference whether the DNA came from the interior or the exterior of the gloves.

¶53 Dodd has not shown that there is a reasonable probability that the result of his trial would have been different if his trial counsel had explored these minor inconsistencies. *See* ***Carter***, 324 Wis. 2d 640, ¶37.

F. Failure to Call L.K. as a Witness

¶54 Dodd asserts that his trial counsel was ineffective for failing to interview, subpoena, and call as witnesses, individuals who were eyewitnesses and who were unable to identify Dodd as the robber. In the eight pages of his brief he devotes to this argument, the passage that follows is the extent of the information Dodd provides that specifically pertains to his case:

> The testimony of a disinterested eyewitness was a crucial aspect of Dodd's defense. One of the witnesses, [L.]K., [who] could not identify Dodd as the suspect, was undoubtedly important to creating reasonable doubt in the State's case against Dodd. Yet, the jury did not have the

> benefit of [L.K.]'s testimony because the lawyer made no efforts to secure her presence at trial. Further, counsel failed to impeach other eyewitnesses who in previous interviews with officer's [sic] could not identify Dodd as the individual who committed the robbery in question. These errors undoubtedly constitute deficient performance on the part of trial counsel. In fact, trial counsel failed to contact any of the eyewitnesses in this case.

¶55 Beyond this one paragraph, Dodd simply presents various court rulings and standards without actually applying them to his circumstances. All we are told in that paragraph is, without any context, that L.K. reportedly could not identify Dodd. We will not develop Dodd's arguments for him. Accordingly, this claim fails. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (the court of appeals need not address the merits of inadequately briefed issues).

¶56 Even if Dodd's claim was sufficiently developed, we would not conclude that his trial counsel performed deficiently for not calling L.K. as a witness. Based on a police report attached to Dodd's postconviction motion, L.K. was a cashier at the auto parts store when the robbery occurred. She saw the robber enter the store holding a gun and then watched him run out. Aside from one paragraph in a police report referencing L.K., Dodd does not direct us to anything in the record to indicate that she actually saw the robber's face, was shown photo arrays, or was otherwise asked to identify Dodd. Because Dodd has not shown what L.K. would have offered at trial, we cannot conclude that his trial counsel's representation fell below objective standards of reasonableness when she did not call L.K. as a witness. *See* ***Carter***, 324 Wis. 2d 640, ¶22.

G. Failure to Investigate and Call Potential Alibi Witness

¶57 Dodd claims he informed trial counsel that he wanted her to talk with and call certain witnesses who could assist in demonstrating his whereabouts during the time that the crime occurred. Though he references witness*es*, he does not name them in his appellate brief. He does, however, direct us to an affidavit from Yesenia Claypool, which was submitted with his postconviction motion. According to Dodd, his "witness would have provided a full account of [his] whereabouts during the time that the robbery occurred."

¶58 Dodd testified at trial. When asked where he was on the date of the crime in April 2011, he responded: "April 29th, I cannot give you exactly like where I was at or what I was eating because it's not a significant date to me, so I can't really say where I was that day. But I know it wasn't doing armed robbery, tell you that." As the State points out, it is notable that Dodd did not reference Claypool in any way. Additionally, his testimony did not comport with Claypool's version of events.

¶59 Aside from a bald assertion, Dodd has not shown that he asked his trial counsel to contact Claypool. Moreover, we are not convinced that the information Claypool would have provided would have changed the outcome of Dodd's trial given that it lacked specificity and was internally inconsistent. He falls short of showing either deficient performance or prejudice on this claim. *See* ***Strickland***, 466 U.S. at 687.

H. Ineffective at Sentencing

¶60 As his final claim, Dodd asserts his trial counsel was ineffective at his sentencing because comments were limited to providing the court with Dodd's

sentence credit and a brief statement that Dodd had already been significantly punished.

¶61 The sentencing transcript reveals that Dodd began speaking for himself at the sentencing hearing and listing the various errors he believed his trial counsel had made during the course of her representation. The trial court gave Dodd the opportunity to make a complete statement at the hearing, and Dodd did so. The trial court then exercised its discretion and imposed a twenty-year sentence.

¶62 On appeal, Dodd does not detail what it is that he believes counsel should have said that would have impacted the trial court's exercise of discretion. We cannot conclude that Dodd was prejudiced based on this undeveloped argument. *See* ***Pettit***, 171 Wis. 2d at 646.

By the Court.—Judgment and order affirmed.

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