COURT OF APPEALS
DECISION
DATED AND FILED

October 3, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP384-CR **Cir. Ct. No. 2013CF5240**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DERRELL R. PICKETT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: CLARE L. FIORENZA and DANIEL L. KONKOL, Judges. *Affirmed.*

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

¶1 PER CURIAM. Derrell R. Pickett, *pro se*, appeals from a judgment of conviction, entered upon a jury's verdict, on one count of possession with intent to deliver more than forty grams of cocaine as party to a crime as a second or subsequent offense. Pickett also appeals from an order denying his motions for postconviction discovery and relief. Pickett makes multiple claims of error that he believes warrant reversal of his conviction and dismissal of the charge against him. We reject Pickett's arguments and affirm the judgment and order.

BACKGROUND

¶2 On May 31, 2013, Milwaukee Police Officer John Shipman and his partner stopped a car at approximately 1:45 a.m. on suspicion that the windows were overly tinted. Officer Gregory Kuspa and his partner assisted with the stop.

¶3 Shipman approached the passenger side of the vehicle, followed by Kuspa, and yelled for the driver to roll down the windows. The driver rolled the windows down halfway. Shipman could see that the front seat passenger—Pickett—had his right arm slung across his body, but could not see Pickett's right hand. Shipman told Pickett to show his hands; Pickett hesitated. Shipman repeated the command; Pickett complied, still hesitant. Shipman directed Pickett to get out of the car, which he did, nervously and without making eye contact.

¶4 Based on Pickett's behavior, Shipman believed he might be armed, so the officer conducted a pat-down of Pickett and discovered a large bulge in his front pants pocket. Pickett told Shipman it was approximately two thousand dollars in cash. At that point, Kuspa told Shipman to put Pickett in handcuffs because Kuspa had spotted what appeared to be a large amount of cocaine on the front passenger floor board. When Shipman handcuffed Pickett, the driver of the car, later identified as Paul Hendriex, fled on foot, though he was apprehended

after a short chase. Both Pickett and Hendriex were taken to the police station. Pickett's money, totaling $2273, was impounded.

¶5 Shipman advised Pickett of his rights and began an interrogation. Pickett first told Shipman he had been at the Potawatomi casino earlier, and the money was his winnings. However, he could not specify how he had won the money, nor did he specify what time he was at the casino. He had also told Shipman that his winnings had been paid all in hundred-dollar bills, but the money included smaller denominations. Pickett said he ran into Hendriex at the casino, got a ride from him, and fell asleep in the car. When he woke up, police were stopping the car and Hendriex threw something at his feet.

¶6 As Shipman continued his interview, Pickett admitted he had not met Hendriex at the casino. Rather, Hendriex had picked him up outside Hendriex's house. They stopped at two other houses, where Hendriex went inside for about five minutes each time; they were never at the casino. Pickett told Shipman that he did not know what Hendriex was up to and did not know about the cocaine until Hendriex told him it was cocaine just before throwing it at his feet.

¶7 For reasons that are not evident from this record, the State initially declined to charge Pickett with a crime. The district attorney's office issued a letter on July 8, 2013, stating it had declined to issue charges. Pickett was then able to obtain his $2273 from the City of Milwaukee on July 18, 2013.

¶8 In November 2013, however, the State charged Pickett with one count of possession with intent to deliver more than forty grams of cocaine as party to a crime as a second or subsequent offense. A jury convicted Pickett of the

charge. The trial court sentenced him to ten years of initial confinement and seven years of extended supervision, consecutive to any other sentence.[1]

¶9 Postconviction counsel was appointed to represent Pickett, but Pickett asked the attorney to withdraw so Pickett could represent himself. Counsel's motion to withdraw was granted. Pickett then filed motions for postconviction discovery and relief.[2] The discovery motion requested a "working copy" of the DVD containing Shipman's custodial interview of Pickett because the copy he had been provided lacked working audio. The motion for relief alleged multiple claims of ineffective assistance of trial counsel and prosecutorial misconduct and a single claim of newly discovered evidence.

¶10 The circuit court denied the motions. With respect to postconviction discovery, it noted that Pickett had not demonstrated how the recording would have altered the trial's outcome, so it denied his request for a new copy. It also concluded that trial counsel had not been ineffective, the prosecution had not engaged in any misconduct, and the newly discovered evidence did not establish a reasonable probability of a different result at trial. Pickett appeals.

[1] The Honorable Clare L. Fiorenza presided at trial and imposed sentence. For clarity, we will refer to her as "the trial court." The Honorable Daniel L. Konkol later denied the postconviction motions; we will refer to him as "the circuit court."

[2] The circuit court's order also denied a motion for the appointment of counsel, which Pickett sought after successfully discharging his previously appointed counsel. Pickett does not address that aspect of the order on appeal, so the issue is deemed abandoned. *See* ***Reiman Assocs., Inc. v. R/A Advert., Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981).

DISCUSSION

¶11 On appeal, Pickett raises what we perceive to be seven claims of error that he believes warrant reversal of his conviction and dismissal of the charge: (1) he should have been given a ***Franks/Mann***[3] hearing; (2) photos of his impounded money were improperly used at trial; (3) the defective DVD recording constitutes a discovery violation and he should have been granted postconviction discovery to obtain another copy; (4) the circuit court erred in concluding his newly discovered evidence did not warrant relief; (5) the prosecutor committed misconduct; (6) his trial attorney was ineffective; and (7) the interests of justice require it.[4] We address each of these claims in turn.

*I. Entitlement to a **Franks/Mann** Hearing*

¶12 Pickett believes the criminal complaint should have disclosed the return of his money after the State initially declined to issue charges. Thus, Pickett first complains that the circuit court "committed reversible error, in determining [his] motion alleging a ***Franks/Mann*** violation" because "the evidentiary facts about the money has the tendency to make the existence of the State's disbelief that Pickett was concerned in drug trafficking more probable." Pickett also appears to believe, by his argument that a ***Franks/Mann*** hearing is

[3] *See* ***Franks v. Delaware***, 438 U.S. 154, 155-56 (1978); ***State v. Mann***, 123 Wis. 2d 375, 385-86, 367 N.W.2d 209 (1985).

[4] The State notes that "[m]ost of Pickett's arguments would normally be considered forfeited because he failed to preserve them at trial," but, because some of the arguments arise in the context of an ineffective-assistance claim, the State addressed the issues on the merits. We likewise decline to apply the forfeiture doctrine to these claims. *See, e.g.*, ***State v. Wilson***, 2017 WI 63, ¶51 n.7, 376 Wis. 2d 92, 896 N.W.2d 682 (a court in its discretion may disregard alleged forfeiture and address merits of issue).

"an exclusive vehicle to exhaustively make a determination of probable cause," that he was automatically entitled to a hearing upon this claim that a critical fact was omitted from the criminal complaint.

¶13 In ***Franks v. Delaware***, 438 U.S. 154, 155-56 (1978), the United States Supreme Court determined that a defendant was entitled to a hearing upon "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the [search] warrant affidavit … if the allegedly false statement is necessary to the finding of probable cause." In ***State v. Mann***, 123 Wis. 2d 375, 385-86, 367 N.W.2d 209 (1985), our supreme court held that "the principles of ***Franks*** permit an attack on criminal complaints where there has been an omission of critical material where inclusion is necessary for an impartial judge to fairly determine probable cause."

¶14 To be entitled to a ***Franks/Mann*** evidentiary hearing, "there must be allegations that … qualified facts are omitted" from the complaint; such allegations "must be stated in an affidavit or offer of proof which identifies … what has been omitted and what part of the complaint, because of the … omission, has been rendered inadequate for a finding of probable cause." ***Mann***, 123 Wis. 2d at 388. "If these requirements are met and if, when the material previously omitted is inserted into the complaint, there remains sufficient content in the criminal complaint to support a finding of probable cause, no ***Franks*** hearing is required." ***Mann***, 123 Wis. 2d at 388.

¶15 In reviewing a complaint for probable cause, we look "to see whether there are facts or reasonable inferences set forth that are sufficient to allow a reasonable person to conclude that a crime was probably committed and

that the defendant probably committed it." ***State v. Reed***, 2005 WI 53, ¶12, 280 Wis. 2d 68, 695 N.W.2d 315. The test is one "of minimal adequacy, not in a hypertechnical but in a common sense evaluation." ***State ex rel. Evanow v. Seraphim***, 40 Wis. 2d 223, 226, 161 N.W.2d 369 (1968). Probable cause may exist notwithstanding an innocent explanation for a defendant's conduct. *See* ***State v. Higginbotham***, 162 Wis. 2d 978, 995, 471 N.W.2d 24 (1991).

¶16 The circuit court concluded that "[t]he return of the money—for whatever reason—would have been irrelevant to what the circumstances were at the time of the arrest. Probable cause was not absent." We agree that even with the omitted information about the money's return inserted into the complaint, probable cause was not absent. That is, who had possession of the money at the time the criminal complaint was filed was not so crucial that its return to Pickett rendered the complaint "inadequate for a finding of probable cause." ***Mann***, 123 Wis. 2d at 388.

¶17 With the fact of the money's return added, the complaint still would have noted that Pickett was in a vehicle with illegally tinted windows, acting hesitantly, with a large amount of cocaine at his feet and a large amount of cash on him. The complaint further alleged multiple signs that the cocaine was meant for sale, including that the cocaine was packed in five separate bags, that the quantity was too great for personal use, that there was no paraphernalia to facilitate personal cocaine use, and "the large sum of money found on Pickett is also indicative of street-level dealing[.]" This is minimally adequate for a finding of probable cause, even if the money was returned to Pickett.

¶18 Additionally, whether the return of the money demonstrates the State's subjective belief about Pickett's behavior, such subjective belief is

irrelevant to a probable cause determination: "[w]here reasonable inferences may be drawn establishing probable cause and equally reasonable inferences may be drawn to the contrary, the criminal complaint is sufficient." ***State v. Manthey***, 169 Wis. 2d 673, 688-89, 487 N.W.2d 44 (Ct. App. 1992). Pickett is not entitled to a ***Franks/Mann*** hearing because there was no violation thereof.

II. The Return of the Money

¶19 Pickett contends that "the return of the money … has established the fact that the money is not contraband, and forbids the use of that money, by representation at a trial." He relies on ***Jones v. State***, 226 Wis. 2d 565, 590, 594 N.W.2d 738 (1999), where our supreme court concluded that money "established to have been acquired through the sale of or used to purchase controlled substances certainly constitutes contraband[.]" Pickett thus reasons that if his cash was returned to him, it was not contraband; if it was not contraband, it must bear no relation to drug trafficking; and if it bears no relation to drug trafficking, the State should not have been allowed to so imply at his trial.

¶20 ***Jones*** discussed the meaning of "contraband" as it was used in WIS. STAT. § 968.20 (1995-96). *See* ***Jones***, 226 Wis. 2d at 569-70. That statute describes the general process by which "[a]ny person claiming the right to possession of property … seized without a search warrant … may apply for its return." *See* WIS. STAT. § 968.20(1) (2015-16).[5] Generally, if the right to possession is otherwise satisfactorily shown, the State must establish property is contraband at a hearing before it may refuse the property's return. *See* WIS. STAT.

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

§ 968.20(1g); ***Jones***, 226 Wis. 2d at 595-96. If property is not required for use as evidence or in further investigation, it may be returned without a hearing, provided it is not contraband. *See* WIS. STAT. § 968.20(2).

¶21 At the time the money was returned to Pickett, police believed it was no longer needed as evidence or for further investigation because the State had declined to issue charges. However, Pickett's money was never actually subjected to a determination of whether it was contraband before it was returned to him. Thus, its return does not prove that the money was not contraband, only that it was not believed to be contraband at the time it was returned.

¶22 Because return of the money does not mean that it was not contraband, we reject Pickett's claim that the State improperly used photos of the seized funds at trial. Pickett appears to believe the photos were improperly used because they created a "false inference" that he had drug money and that the State still had custody of the money at the time of trial. However, the actual custodian of the funds at the time of the trial is irrelevant; what mattered is that the money was found on Pickett at the time of the arrest. Regardless of whether the funds were from narcotics sales, the photos would still have been relevant to undermine Pickett's claim that the money was all hundred-dollar bills paid from the casino. Use of the photos was not improper.

III. Audioless DVD and Discovery

¶23 Pickett next contends that the circuit court erred in denying his postconviction discovery demand for a "working copy" of the DVD recording of his interrogation. He asserts that WIS. STAT. § 971.23 "does not provide that the disclosure of a defective video-recording with no audio, the only verbatim account of a defendant's in-custody statement, establishes full-disclosure of that

statement." The circuit court denied the postconviction discovery request because it was "at a loss as to how this [DVD] would have altered the outcome of the trial."

¶24 To the extent that Pickett is claiming a pretrial discovery violation under WIS. STAT. § 971.23(1)(a) because he believes that the State failed to provide "[a]ny written or recorded statement concerning the alleged crime made by the defendant," we note that while all parties had difficulty getting the audio to work, Pickett's trial attorney was ultimately able to hear and understand the contents of the video. Thus, the State complied with § 971.23. We also note that the State ultimately decided not to use the recording at trial because aside from the audio problem, there were also extensive references to Pickett's prior motion. Defense counsel indicated no objection to this approach.

¶25 Pickett also appears to believe that because Shipman testified about his custodial interview of Pickett—that is, about the contents of the recording—the recording is necessary to authenticate Shipman's testimony. *See, e.g.*, WIS. STAT. §§ 909.01, 909.015. However, while Shipman's testimony might be needed to authenticate a recording, the converse is not true—a recording is not necessary to authenticate live testimony. Shipman is competent to testify about the interview by virtue of having been a participant in it.[6]

¶26 In any event, a party seeking postconviction discovery must:

> (1) provide supporting affidavits with the motion which describe the material sought to be discovered and explain why the material was not supplied or discovered at or

[6] If no recording existed at all, there would be no question that Shipman's testimony was appropriate and admissible.

> before trial; (2) establish that alternative means or evidence is not already available such that the postconviction discovery is necessary to refute an element in the case; (3) describe what results the party hopes to obtain from discovery and explain how those results are relevant and material to one of the issues in the case; and (4) after meeting the first three criteria, the party must then convince the trial court that the anticipated results would not only be relevant, but that the results would also create a reasonable probability of a different outcome. General allegations that material evidence may be discovered are inadequate for postconviction discovery motions.

State v. O'Brien, 214 Wis. 2d 328, 343-44, 572 N.W.2d 870 (Ct. App. 1997). Whether to grant postconviction discovery is committed to the circuit court's discretion. *See* ***id.*** at 344.

¶27 Pickett fails to satisfy the ***O'Brien*** requirements. He claimed the recording would show Hendriex "said 'cocaine' before throwing the cocaine by his feet," but Shipman testified that Pickett had told him that information, so the recording would have been cumulative. Pickett suggests that he "knows Shipman's statement is not accurate but he can't prove that it isn't nor can it be proven that it is," but does not indicate what parts of Shipman's testimony were inaccurate or how they were wrong. Pickett also claims he was threatened by his interviewer, but he does not indicate what form the threat took, what the threat consisted of, or what the threat coerced him to do or say. Pickett further does not explain what relevant information he expects to find in the recording or how that information, if found, creates a reasonable probability of a different outcome. We therefore conclude the circuit court did not erroneously exercise its discretion in denying the motion for postconviction discovery.

IV. Newly Discovered Evidence

¶28 Pickett's postconviction motion also sought relief based on newly discovered evidence. He submitted an affidavit from a woman named Olympia Williams, stating she met Pickett at Potawatomi Casino "back in May of 2013." According to the affidavit, she saw him at the blackjack table and noted that he had about $2500-$3500 in chips. Before leaving, he gave her his business card.

¶29 The circuit court rejected this claim of newly discovered evidence because there was "no specificity associated with this affidavit," like a date or time that Williams met Pickett, so the affidavit did not "establish a reasonable probability of a different result at trial, particularly since Officer Shipman told the jurors that the defendant ultimately admitted lying about the money having come from Potawatomi." Pickett complains that the circuit court erred when it interpreted Williams' affidavit "in a hyper-technical manner."

¶30 The decision to grant a motion for a new trial based on newly discovered evidence rests in the circuit court's discretion. ***State v. Plude***, 2008 WI 58, ¶31, 310 Wis. 2d 28, 750 N.W.2d 42. A defendant seeking a new trial based on newly discovered evidence must establish "'by clear and convincing evidence, that: (1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.'" ***State v. Armstrong***, 2005 WI 119, ¶161, 283 Wis. 2d 639, 700 N.W.2d 98 (citation omitted). If the defendant satisfies these requirements, "'the circuit court must determine whether a reasonable probability exists that a different result would be reached in a [new] trial.'" ***Id.*** (citation omitted). "A reasonable probability of a different outcome exists if 'there is a reasonable probability that a jury, looking at both the old

evidence and the new evidence, would have a reasonable doubt as to the defendant's guilt.'" ***State v. Love***, 2005 WI 116, ¶44, 284 Wis. 2d 111, 700 N.W.2d 62 (citation and two sets of brackets omitted).

¶31 The circuit court evidently assumed that Williams' affidavit satisfied the first four prongs of the newly discovered evidence test. We will do so as well. That leaves only the question of whether a jury, considering the evidence adduced at trial and Williams' affidavit, would have reasonable doubt about Pickett's guilt. We agree with the circuit court that it would not.

¶32 First, it is not hypertechnical to criticize an affidavit purporting to be newly discovered evidence when it fails to include crucial information, like a date and time. A defendant is required to make his plea for relief with specificity. ***State v. Allen***, 2004 WI 106, ¶¶9, 23, 274 Wis. 2d 568, 682 N.W.2d 433. Second, it is not reasonably probable that Williams' testimony would create reasonable doubt in the jury's minds. Pickett first told Shipman that the money was casino winnings, though he could not recall how he had won it. Further, according to Shipman, Pickett later admitted that he had lied and had not been at Potawatomi. It is therefore not reasonably probable that the jury would accept Williams' testimony that Pickett had won all of that money at blackjack at Potawatomi when Pickett himself could not say how he won the money and eventually disavowed being at Potawatomi at all. The circuit court properly exercised its discretion in denying Pickett's motion for a new trial based on newly discovered evidence.

V. Prosecutorial Misconduct

¶33 Pickett claims that the circuit court erred in concluding the State's "acts and omissions" were not prejudicial to his defense. He contends the State engaged in misconduct when it "arbitrarily and capriciously" charged him four

months after issuing a letter stating the district attorney had "declined to issue charges," "did not disclose the facts about the money ever," and failed to disclose the property return slip for his money as part of discovery.

¶34 To the extent that Pickett insists that the State, by its failure to "disclose the facts about the money," committed a ***Franks/Mann*** violation and created false implications, we have already explained why these complaints do not constitute error. That leaves us with two additional misconduct claims: that the State improperly delayed charging Pickett and that it failed to disclose exculpatory evidence in the form of the property return slip.

¶35 The State has wide discretion in choosing whether to prosecute. *See* ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶¶29-30, 271 Wis. 2d 633, 681 N.W.2d 110. The statute of limitations for prosecuting felonies like Pickett's is six years. *See* WIS. STAT. § 939.74(1). "[T]he statute of limitations prescribed by the legislature for various offenses is the primary guarantee against bringing overly stale prosecutions." ***State v. Rogers***, 70 Wis. 2d 160, 164, 233 N.W.2d 480 (1975).

¶36 The statute of limitations is not the sole consideration when evaluating whether a charging delay amounts to a due process violation. *See* ***id.*** Other factors include whether the government intentionally delayed to gain a tactical advantage or to harass the defendant and whether the defendant suffered prejudice. *See* ***id.*** Actual prejudice must be shown; the "possibilities of prejudice inherent in any extended delay are not enough," in light of the statute of limitations, to warrant dismissal of a charge. *See* ***id.*** at 165. However, Pickett

does not adequately develop any argument along these lines.[7] In particular, it is not evident what actual prejudice Pickett is claiming from a mere four-month charging delay.[8]

¶37 Pickett also appears to be alleging that the State committed a discovery violation when it failed to disclose the return-of-property receipt, which he evidently believes was exculpatory. Discovery of evidence is required "only of evidence that is both favorable to the accused and 'material either to guilt or punishment.'" ***State v. Garrity***, 161 Wis. 2d 842, 848, 469 N.W.2d 219 (Ct. App. 1991) (one set of quotation marks and citation omitted). For reasons already explained, the return of the money is not material to Pickett's guilt or punishment, nor, for that matter, is it exculpatory. Failure to disclose the property return receipt was not a discovery violation. The circuit court did not err in rejecting Pickett's claims of prosecutorial misconduct.

VI. Ineffective Assistance of Trial Counsel

¶38 Pickett next claims that trial counsel was ineffective in multiple ways. The well-known test for ineffective assistance of counsel requires a defendant to show both that counsel performed deficiently and that the deficiency prejudiced the defense. *See, e.g.*, ***State v. Mayo***, 2007 WI 78, ¶60, 301 Wis. 2d 642, 734 N.W.2d 115.

[7] To the extent that Pickett is attempting to invoke some sort of estoppel doctrine, such argument is wholly undeveloped. We will not develop an argument for him. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

[8] At best, Pickett appears to claim prejudice from an inability to obtain security tapes from Potawatomi, but it is not clear why these tapes are necessary given that Pickett disavowed his presence there.

¶39 Pickett claims that trial counsel was ineffective for failing to: (1) move for a ***Franks/Mann*** hearing; (2) move for discovery and inspection; (3) examine police officer Chad Vartanian; (4) call Pickett's employer, Marquise Hopgood; (5) investigate and gather exculpatory evidence; and (6) object to the State's use of photos of the money.

¶40 With respect to Pickett's claims that counsel should have moved for a ***Franks/Mann*** hearing and objected to the use of the photos of the money, we have already explained why there is no merit to the underlying claims. Counsel is not ineffective for failing to pursue meritless arguments. *See* ***State v. Harvey***, 139 Wis. 2d 353, 380, 407 N.W.2d 235 (1987).

¶41 Pickett claims that counsel should have moved for discovery and inspection, which would have led to information about the returned money, and called Vartanian, the officer who returned the money, as a witness. We have already explained that return of the money is irrelevant and not exculpatory, so counsel is not ineffective for failing to pursue these matters. *See* ***id.***; *see also* ***State v. Cummings***, 199 Wis. 2d 721, 747 n.10, 546 N.W.2d 406 (1996).

¶42 Pickett also asserts counsel should have called Marquise Hopgood, Pickett's boss, to testify "that Pickett was in fact a barber, not a drug dealer, and that Pickett made between '$4,000 to $5,000 per month' at [Hopgood's] barbe[r]shop." Hopgood "could have shown the jury that Pickett had a legitimate source of income, from working." As the circuit court noted, the fact that Pickett may have had a legitimate source of income does not preclude his involvement in drug trafficking. Further, Pickett does not suggest that Hopgood had any way to know where Pickett's money on May 31, 2013, came from. Additionally, Pickett does not indicate that he ever told police or his attorney that the $2273 came from

his employment.[9] We are therefore unpersuaded that trial counsel was deficient in failing to call Hopgood.

¶43 Finally, it is not clear what exculpatory evidence Pickett believes trial counsel was required to investigate and gather. If it was information related to the return of the money, that information was not exculpatory. If it is some other evidence, the matter is insufficiently developed and we decline to consider it further.[10]

VII. New Trial in the Interests of Justice

¶44 Finally, Pickett asks us to exercise our discretionary power of reversal because the interests of justice so require. *See* WIS. STAT. § 752.35. He relies on the claims of error already set forth in this opinion. Because we reject those claims, we are not persuaded that discretionary reversal is warranted.

By the Court.—Judgment and order affirmed.

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

[9] Indeed Pickett's claim that Hopgood should have been called to testify to facts implying that Pickett's money was made at the barbershop seems to contradict his claim that Williams would testify he won the money at the casino.

[10] To the extent there are other arguments within Pickett's appellant's brief that we have not discussed, they are deemed to be either too conclusory or lacking sufficient merit to warrant individual attention. *See* ***M.C.I., Inc.***, 146 Wis. 2d at 244-45; ***Libertarian Party of Wis. v. State***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996).