COURT OF APPEALS
DECISION
DATED AND FILED

January 29, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP3139-CR **Cir. Ct. No. 2002CF5742**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAVELLE P. JACKSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed.*

Before Higginbotham, P.J., Lundsten and Bridge, JJ.

¶1 PER CURIAM. Lavelle Jackson appeals a judgment of conviction. We affirm.

¶2 Jackson first argues that the circuit court erred in denying his motion claiming selective or vindictive prosecution. He argues that his prosecution for felon in possession of a firearm was discriminatory because there were three other felons riding in the same car who could also have been charged with this crime, but only he was charged. He claims that the prosecutor was motivated by Jackson's failure to appear as a victim witness in a different case. The circuit court rejected this claim without a hearing on the ground that Jackson failed to present evidence of discriminatory intent by the prosecutor. The court noted that the prosecutor averred by affidavit that the prosecutor did not know about the earlier case at the time he charged Jackson.

¶3 Although a court's decision about whether a motion is facially sufficient to require an evidentiary hearing is sometimes one of law, *see*, *e.g.*, ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996), case law holds that we review this decision in the selective prosecution context using the deferential "clearly erroneous" test, because the decision "essentially involve[s] factual inquiries." ***State v. Kramer***, 2001 WI 132, ¶17, 248 Wis. 2d 1009, 637 N.W.2d 35. On appeal, Jackson's argument does not dispute the circuit court's analysis. Jackson does not point to any evidence he would have introduced to counter the prosecutor's affidavit, such as evidence that the prosecutor did know of Jackson's earlier non-appearance. Therefore, we conclude that the court's decision was not clearly erroneous.

¶4 Jackson next argues that the State was "overzealous" in prosecuting him. The argument is based on the actions of Milwaukee detectives who interviewed him shortly after his arrest in Minnesota. His argument appears to flow as follows: Jackson was scheduled to first appear before a Minnesota court on a certain date; Milwaukee detectives asked Minnesota authorities to reset that

appearance so they could further investigate; if Jackson had appeared in court, counsel would have been appointed for him, and police could then not have questioned him without consultation with counsel; therefore, Milwaukee police demonstrated "overzealousness" by "blocking the normal procedure" so they could speak to him without involvement of counsel.

¶5 Jackson appears to concede that this police action was not a ***Riverside*** violation, because his arrest was not without a warrant. *See* ***County of Riverside v. McLaughlin***, 500 U.S. 44 (1991). However, this leaves his argument as nothing more than a general assertion of "overzealousness." He does not tie this assertion to any specific legal theory, and we therefore reject the argument.

¶6 Jackson next argues that, during closing argument, the prosecutor twice criticized the defense for putting on only two of the four alibi witnesses that defense counsel had said would be presented. Jackson argues that this was improper because, in fact, defense counsel had *not* stated that all four witnesses would appear, but had said that only some may. Even if we assume this was improper, we see no basis for relief here, because Jackson does not sufficiently argue how he was prejudiced by this brief comment in closing argument.

¶7 Jackson next argues that he is entitled to relief because, during closing argument, the prosecutor arguably implied that the defense called a certain witness first because that witness was supposed to be a strong witness. Jackson objected to this statement at the time, and the court informed the jury that it was the court, not the defense, that ordered this witness to testify first. Jackson argues that this was not a sufficient response, because the court did not tell the jury to disregard the prosecutor's comment and denied Jackson's motion for mistrial. We see little significance to whether the court specifically instructed the jury to

disregard the remark, when the court's factual statement clearly undercut the inference Jackson was trying to prevent the jury from making. Jackson does not clearly explain why this factual statement by the judge was insufficient to prevent a mistrial.

¶8 Jackson next argues that the prosecution or the court improperly "intimidated" his two alibi witnesses. He first argues that, before his mother testified, the court stated that she had a warrant outstanding against her. This argument has no merit because Jackson does not explain how this statement by the court may have affected her testimony. He does not claim that the jury heard the court's statement. As to the other alibi witness, Jackson argues that before she testified, she was arrested on an outstanding warrant for parking tickets, placed in restraints, and as a result was tearful during her testimony. Jackson asserts that this prevented her from "effectively" testifying, but he does not develop an argument as to how her testimony was not effective. We therefore do not address this argument. *See* ***Kristi L.M. v. Dennis E.M.***, 2007 WI 85, ¶20 n.7, 302 Wis. 2d 185, 734 N.W.2d 375 (insufficiently developed arguments need not be addressed).

¶9 Finally, Jackson argues that the State failed to meet its burden of proof at the ***Miranda/Goodchild*** hearing to determine whether his statement in Minnesota was taken in violation of his constitutional rights. He argues that the State failed because, even though equipment was available to videotape the interrogation, the Milwaukee police did not use it, and therefore the State was unable to present the "best evidence" in support of its position. This is a policy argument more than a legal argument. He cites no authority that requires use of "best evidence" or videotaping for this purpose. He quotes from ***State v. Jerrell C.J.***, 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110, but that case held

only that custodial interrogations of *juveniles* must be electronically recorded in future cases. Jackson was not a juvenile, and thus ***Jerrell C.J.*** does not apply.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2007-08).