COURT OF APPEALS
DECISION
DATED AND FILED

August 11, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1292-CR **Cir. Ct. No. 2005CF5814**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NORRIS EDWARD PEGUES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Affirmed*.

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

¶1 PER CURIAM. A jury found Norris Edward Pegues guilty of attempted first-degree intentional homicide and possession of a firearm by a felon.

See WIS. STAT. §§ 940.01(1)(a), 939.32 and 941.29(2) (2005-06).[1] The court imposed a thirty-year sentence for the attempted homicide and a consecutive ten-year sentence for the possession of a firearm. In this *pro se* appeal from the judgment of conviction, Pegues raises twenty-six enumerated issues.[2] We affirm.

BACKGROUND

¶2 Pegues and Helina Bista had been involved in a lengthy relationship that had ended a few months before this incident. On October 7, 2005, Pegues approached Bista as she sat in her car in a restaurant parking lot. Pegues pursued Bista in his car, and the two had a brief conversation through the cars' windows during which Pegues pulled a gun, aimed it at Bista's face, and pulled the trigger. Bista heard "click, click" and she drove away. As she fled, she heard shots. While she drove, Bista called "911." Pegues rear-ended Bista's car in a parking lot, and continued to chase her as she attempted to get away on city streets. Bista testified that "[b]ullets were going through [her] car" as she drove, and that Pegues "cornered" her in the area of Layton Boulevard and 72nd Street and continued to fire shots at her. Bista "crouched down [and] maneuvered out" of her car on the

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] Pegues was initially represented by Attorney Terry Evan Williams. After the notice of appeal was filed, Williams moved to withdraw and submitted documentation showing that Pegues had discharged him and wanted to proceed *pro se*. This court informed Pegues of the risks and consequences of proceeding *pro se*. The State Public Defender declined to appoint new counsel for Pegues. In response, Pegues reiterated his desire to represent himself and Attorney Williams's motion to withdraw was granted. In that order, this court directed Pegues to inform the court whether he wanted to voluntarily dismiss the appeal and seek postconviction relief in the circuit court. That order informed Pegues that the court would extend the filing deadlines of WIS. STAT. RULE 809.30(2)(h) if necessary. Pegues responded by advising this court that he "wish[ed] to continue this first appeal" and "the circumstances will not warrant [him] to dismiss this appeal to seek postconviction relief in the trial court."

passenger side and ran and hid behind some trees. Bista testified that she heard shots as she was running. Pegues was charged with attempted first-degree homicide and possession of a firearm by a felon. Additional facts will be stated below as necessary.

DISCUSSION

A. Introduction.

¶3 Pegues raises a host of issues on appeal. Many are set forth in brief sentences and are not supported by any legal argument or authority. Moreover, Pegues sets forth the trial court's response to only two of the twenty-six issues, candidly admitting that the other issues "were developed after the review of the court records" and that the issues were addressed by the trial court "without any objections from defense counsel." That broad concession of waiver, and Pegues's grossly inadequate legal argument, drives much of our opinion. With those initial comments in mind, we turn to Pegues's appellate contentions.

B. Racial Discrimination.

¶4 Pegues complains that he was charged more severely because he is African-American and Bista is Caucasian. Pegues goes on to make a wide-ranging attack on the Milwaukee County District Attorney's office, suggesting that it exercises its charging discretion in a discriminatory and racially biased fashion. We wholeheartedly agree with the State's position—Pegues's "claim is wholly without merit … [and] without any specifics about how race played a role in *his* prosecution." (Emphasis in State's brief.) Pegues's first argument is entirely conclusory and not supported by any facts in this record.

C. Prosecutorial Misconduct

¶5 Pegues points to several instances of claimed prosecutorial misconduct. Pegues asserts that the State used a peremptory challenge to remove a juror with a Hispanic surname. Pegues did not raise this objection at trial and, therefore, it is waived. *See* ***State v. Damon***, 140 Wis. 2d 297, 300, 409 N.W.2d 444 (Ct. App. 1987) (Failure to timely object waives an error, including a claimed error based on an alleged violation of a constitutional right.). Moreover, Pegues fails to identify the juror or explain why the State's striking of the juror was improper. Arguments unsupported by legal authority will not be considered. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶6 Pegues contends that the State withheld exculpatory evidence concerning the number of his prior felony convictions and, by doing so, improperly caused him to stipulate to the existence of a prior felony conviction. Prior to the start of trial, the parties told the court that they were stipulating that Pegues had one prior felony conviction. Pegues expressly agreed to the proffered stipulation. Court records indicate that Pegues had been convicted of felony failure to pay child support in the mid-1990's. *See* Wisconsin Circuit Court Access records for ***State v. Pegues***, Milwaukee County circuit court case No. 94CF944357. This court may take judicial notice of those records. *See* ***Watton v. Hegerty***, 2007 WI App 267, ¶26 n.17, 306 Wis. 2d 542, 744 N.W.2d 619, *rev'd on other grounds*, 2008 WI 74, 311 Wis. 2d 52, 751 N.W.2d 369. Pegues has not shown that the State acted improperly in connection with his prior felony conviction.

¶7 Pegues also contends that the State did not disclose evidence that he could have used to impeach the testimony of one of the State's witnesses, Officer

David Novy. Pegues claims that Novy's trial testimony varied from his testimony at a pretrial hearing. Pegues also complains that he was not provided with a copy of a police report from an Officer Zienkiewicz that he believes contradicts a report filed by Novy. Pegues's contentions fail.

¶8 Pegues does not identify the claimed inconsistencies in Novy's testimony. As the State points out, "[i]t is not the responsibility of the State to point out to the defendant the evidence he has in his possession." The appellate record does not contain police reports, and in its brief, the State asserts that it is not aware of any undisclosed police report. Pegues did not file a reply brief, and therefore, the State's assertion is deemed admitted. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979).

D. Miranda[3]

¶9 Pegues contends that statements he made to police at the scene should have been suppressed. The trial court denied Pegues's pretrial suppression motion. The court found that police were dispatched to a report of shots being fired and that when Officer Novy arrived, Pegues was slowly walking away from the vehicles, using a four-legged walker. Novy recognized Pegues from previous contacts. The court found that Novy approached Pegues and asked him "words to the effect of what was going on." Before Pegues responded, another officer told Novy that the victim said that Pegues had been shooting at her. Novy could not see a gun in Pegues's hands, and he asked Pegues if he had a gun. Pegues replied

[3] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

that he did and it was in his car. Pegues also told Novy "I tried to shoot the bitch, she won't leave me alone." Pegues was then arrested.

¶10 The trial court found that Pegues was not in custody when police asked him those questions and, therefore, police were not required to give him the ***Miranda*** warnings beforehand. In his brief, Pegues disagrees with the trial court's conclusion, noting that an officer had told him not to move and that he was being held at gunpoint. Pegues's argument, however, is not adequately developed and, therefore, we decline to address it. *See* ***Pettit***, 171 Wis. 2d at 646.

E. Trial Court Errors

¶11 Pegues next catalogues fifteen claimed trial court errors. The first three claimed errors relate to the jury—Pegues asserts that five jurors "showed potential for … bias"; that the entire jury panel should have been struck because of the possibility that a dismissed juror tainted the panel before his dismissal; and that the trial court should have granted his motion to strike the entire panel for "racial imbalance." Pegues's contentions are conclusory and he has not shown any error. Pegues does not develop any coherent argument in support of his positions and, accordingly, we do not address them. *See* ***id.***

¶12 Pegues complains that the trial court improperly told the jury that Pegues was physically disabled when it explained why Pegues would not be standing when the jury entered and exited the courtroom. Pegues did not object to the trial court's explanation and, therefore, this issue is waived. *See* ***Damon***, 140 Wis. 2d at 300.

¶13 Pegues contends that the trial court improperly influenced his decision to testify when the court refused to end court for the day so that Pegues's

testimony would not be broken up between two days. Pegues does not explain how the court's scheduling decision influenced his decision whether to testify or how he was prejudiced. This argument is not developed. *See* ***Pettit***, 171 Wis. 2d at 646.

¶14 Pegues states that the court erred when it permitted the detective who sat with the assistant district attorney at the State's counsel table to testify. Because Pegues did not object at trial, the issue is waived.[4] *See* ***Damon***, 140 Wis. 2d at 300.

¶15 Pegues asserts that one of the State's witnesses improperly "gave expert testimony on Pegues'[s] physical impairments relating to the use of handguns." Pegues offers no supporting argument and we decline to address the matter. *See* ***Pettit***, 171 Wis. 2d at 646.

¶16 Pegues contends that the trial court should have ordered a presentence investigation report (PSI). The record shows that Pegues's attorney expressly eschewed the preparation of a PSI because it would have delayed sentencing. Pegues cannot now complain about the lack of a PSI.

¶17 Pegues next spends one-and-one-half pages making several additional claims that are all conclusory and undeveloped. He suggests that the jury instructions were erroneous, that there was insufficient evidence to support the guilty verdicts, and that the court committed error at sentencing. He also

[4] Any objection would have been overruled because the detective's presence at counsel table during trial was authorized by WIS. STAT. § 906.15(2)(c) (A witness exclusion order does not authorize the exclusion of "[a] person whose presence is shown by a party to be essential to the presentation of the party's cause.").

contends that his Due Process rights were violated when police seized his car, that the property forfeiture statute was applied in a racially discriminatory fashion, and that the charges were multiplicitous. Pegues's arguments are not developed and we decline to address them. *See* ***id.***

F. Ineffective Assistance of Trial Counsel

¶18 Pegues next sets forth several acts of his trial counsel that he believes violated his constitutional right to the effective representation of counsel. To succeed on a claim of ineffective assistance of counsel, Pegues must show that his attorney's performance was deficient and that the deficient performance prejudiced his defense. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). There is a strong presumption that the attorney has rendered effective assistance and made all significant decisions exercising reasonable professional judgment. ***Id.*** at 689. If a defendant is unable to show one prong, this court need not address the other. ***Id.*** at 697.

¶19 Pegues raises the following complaints about his attorney's performance:

- Counsel did not file a substitution of judge after a pretrial bail hearing;
- Counsel did not move for a reduction in pretrial bail;
- Counsel did not properly impeach the State's witnesses, particularly Bista;
- Counsel did not retain an expert to investigate and reconstruct the crime;
- Counsel did not adequately investigate defenses;
- Counsel advised Pegues to stipulate to the prior felony conviction;

- Counsel did not request the preparation of a presentence investigation report;

- Counsel referred to Pegues's pretrial plea of not guilty by reason of mental disease or defect during his sentencing comments; and

- Counsel had a conflict of interest.

¶20 As with many of Pegues's other contentions, his claims of ineffective assistance of counsel are conclusory and insufficiently developed.[5] Pegues does little more than describe the action or inaction of his trial counsel that he believes was ineffective. That is not sufficient. "'A defendant who alleges that counsel was ineffective by failing to take certain steps must show with specificity what the actions, if taken, would have revealed and how they would have altered the outcome of the proceeding.'" ***State v. Provo***, 2004 WI App 97, ¶15, 272 Wis. 2d 837, 681 N.W.2d 272 (citation and brackets omitted). Pegues has not shown that his trial counsel provided ineffective representation.

By the Court.—Judgment affirmed.

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

[5] Pegues did not file a postconviction motion challenging counsel's representation. *See* n.2, *supra*. Thus, any claim of ineffectiveness has not been adequately preserved for appeal. *See* ***State v. Machner***, 92 Wis. 2d 797, 803-04, 285 N.W.2d 905 (Ct. App. 1979).