COURT OF APPEALS
DECISION
DATED AND FILED

December 23, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP2724-CR **Cir. Ct. No. 2005CF57**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL J. SCHEELER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Richland County: EDWARD E. LEINEWEBER, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Daniel Scheeler appeals from a judgment of conviction and an order denying his motion for postconviction relief. We affirm.

¶2 Scheeler was convicted of one count of attempted first-degree intentional homicide, one count of first-degree recklessly endangering safety, and one count of possession of THC. The charges were based on a single course of conduct involving Scheeler's use of a knife against one victim. The circuit court denied his postconviction motion.

¶3 Scheeler first argues that he should be given a new trial because certain medical records were admitted at trial by stipulation of the parties, thus violating his right to confrontation of witnesses. He argues that it was plain error for the court to admit the records. We disagree. There was no error by the court; rather, there was a stipulation by the parties. Scheeler has not convinced us that the plain error doctrine can be used to review stipulated admission of evidence.

¶4 Scheeler also argues that his trial counsel was ineffective by stipulating to admission of the records. To establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). We need not address both components of the analysis if defendant makes an inadequate showing on one. ***Id.*** at 697.

¶5 Scheeler appears to argue that he was prejudiced because one of the medical reports suggested that the injuries were more severe than they actually were, and that this caused the jury to infer intent to kill. He argues that if trial counsel had subpoenaed the doctors themselves, the jury "may well have" concluded that the injuries were not severe at all. We reject the argument. There was ample other evidence, related to the interaction between Scheeler and the victim, from which the jury could have inferred intent. We see no reason to believe that a dispute over the precise severity of the injuries would have led to a different outcome. There is no

indication from the records that the injury was other than a penetrating knife wound to the chest, which is a serious injury by any measure. Furthermore, Scheeler apparently did not call the doctors to testify at the postconviction hearing. It is difficult to understand how he can show prejudice without showing that the doctors, if they had appeared at trial and been examined, would have testified in a manner more favorable to him than the reports alone.

¶6 Scheeler next argues that his trial counsel had a conflict of interest. His theory appears to be that because his appointed trial counsel had agreed to sell his law practice to another attorney, who eventually served as "first chair" counsel at his trial, this somehow gave trial counsel an interest that was in conflict with Scheeler's interests. We are not able to see any sense in which counsel's sale of the practice created an interest divergent from Scheeler's. Furthermore, under the law Scheeler relies on, it is necessary for him to show that counsel's advocacy was somehow adversely affected. *See* ***State v. Cobbs***, 221 Wis. 2d 101, 107, 584 N.W.2d 709 (Ct. App. 1998). Scheeler has not established any specific, concrete way in which counsel's performance was adversely affected by the alleged conflict.

¶7 Finally, Scheeler argues that the court failed to order a pretrial competency examination of him under circumstances where there was "reason to doubt" his competency. *See* WIS. STAT. § 971.14(1). Scheeler's argument appears to overlook the fact that, although there were some initial discussions regarding his competency, his trial counsel and the court later agreed that Scheeler had improved. Beyond that one early point, Scheeler points to no other indication of reason to doubt his competency later in the proceedings. This is not sufficient to trigger the duty for an examination.

By the Court.—Judgment and order affirmed.

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