

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 24, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP1542

Cir. Ct. No. 2009FO1769

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KRAY A. BURKART,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
PATRICK M. BRADY, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ Kray Burkart, pro se, appeals a default judgment, convicting him of forfeiture harassment. Burkart alleges the circuit court lacked

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

subject matter and personal jurisdiction, and the complaint violated his constitutional rights. We affirm.

BACKGROUND

¶2 On September 17, 2009, the State charged Burkart, a Minnesota resident, with forfeiture harassment for conduct that occurred in Marathon County, Wisconsin. In October, Burkart appeared in person to contest the charge, entered a not guilty plea, and argued the allegations “are from previous charges that were dismissed.” In response, the State explained that when “the ADA ... dismissed [the previous criminal complaint], [he] indicated he was going to refile it as a forfeiture.”

¶3 In January 2010, Burkart filed a motion asserting the court lacked jurisdiction because there is a Minnesota child custody order between himself and the victim and the complaint was “unconstitutionally vague” and “subject[ed him] to Double Jeopardy.” At the motion hearing, the court determined it had jurisdiction over the case, the complaint was specific as to the offense, the dates, and location of the offense, and Burkart was in possession of all the police reports and other discovery the State would use at trial.

¶4 In April, Burkart failed to appear at a scheduled hearing. The State moved for a default judgment, and the court defaulted Burkart. The court subsequently denied Burkart’s motion to reopen.²

² The Honorable Glenn H. Hartley presided over the motion to reopen hearing.

DISCUSSION

¶5 On appeal, Burkart argues the court lacked subject matter and personal jurisdiction, and the complaint was unconstitutional.³ Burkart does not challenge the default judgment or the order denying his motion to reopen. Although we note Burkart should have appealed the order denying his motion to reopen, in the interest of judicial economy, we will address Burkart’s appeal on the merits.

¶6 Burkart first asserts the court lacked subject matter jurisdiction. Subject matter jurisdiction refers to a court’s ability to hear a particular type of case. *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶8, 273 Wis. 2d 76, 681 N.W.2d 190. In Wisconsin, circuit courts have “subject matter jurisdiction to entertain actions of any nature whatsoever.” *Id.*, ¶8; WIS. CONST. art. VII, § 8 (“Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state.”). Here, the State issued a forfeiture complaint against Burkart for harassment, contrary to WIS. STAT. § 947.013(1m)(b). The complaint alleged the harassment occurred in Marathon County, Wisconsin. The circuit court had subject matter jurisdiction over this case.

¶7 Burkart next argues the circuit court lacked personal jurisdiction because he was not properly served and his summons was deficient. A defense of lack of personal jurisdiction is waived if not raised in a defendant’s answer, in a

³ We had difficulty following Burkart’s arguments because they are poorly developed both factually and legally. Any argument that we do not address is denied because it is inadequately briefed and lacks any discernable merit. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court will not consider inadequately developed arguments).

motion filed before the answer, or in a responsive pleading. WIS. STAT. § 802.06(2), (8)(a). Additionally, where an appearance is made and relief is sought on other matters, a defendant's objection to lack of personal jurisdiction is waived. *Artis-Wergin v. Artis-Wergin*, 151 Wis. 2d 445, 452-53, 444 N.W.2d 750 (Ct. App. 1989) (holding an attorney's action of writing to the court to request that it stay proceedings served as an appearance by the nonresident defendant and gave the court personal jurisdiction).

¶8 Burkart, prior to contesting personal jurisdiction, appeared before the court on three occasions and wrote to the court asking for the charge to be dismissed, asking permission to appear by phone, requesting a jury trial, requesting discovery, and asking for a gag order between the Marathon County assistant district attorney and a Minnesota attorney handling his child custody matter. These actions show Burkart submitted himself to the court's jurisdiction.

¶9 Burkart also contends that the complaint was unconstitutionally vague and ambiguous, and prevented him from preparing a defense. From what we can discern, it appears this allegation stems from his arguments that: (1) the complaint did not identify the victim; and (2) the State refused at the motion hearing to limit the acts it intended to use to prove harassment, opting instead to use all the acts outlined in the police reports that occurred within the time period specified in the complaint. We note the record reveals Burkart knew the victim's identity—he wrote a letter to the court identifying the victim and the State confirmed the victim's identity at the motion hearing. Further, Burkart's argument that the State must limit the evidence it intends to offer is undeveloped, and we will not consider it. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶10 Finally, Burkart asserts the complaint violated his right against double jeopardy because “the action is based on police reports from identical or similar civil actions.” Other than his sweeping contention, he offers no support for this argument. From the record, it appears Burkart’s double jeopardy argument stems from his contention that the criminal complaint issued against him was dismissed without prejudice and reissued as a forfeiture. Jeopardy does not attach to an offense dismissed without prejudice. *See* WIS. STAT. § 972.07.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

