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November 11, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1921-CR State of Wisconsin v. Jason Taylor McBeth (L.C. # 2013CF5675)

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

A jury found Jason McBeth guilty of operating a motor vehicle without the owner's consent. *See* WIS. STAT. § 943.23(3) (2013-14).[1] On appeal, McBeth challenges the sufficiency of the evidence and claims error in the admission of hearsay evidence. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

We may not reverse a conviction on the basis of insufficient evidence "unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). It is the function of the jury to decide issues of credibility, to weigh the evidence, and to resolve conflicts in the testimony. *See **id.*** at 506.

At trial, Q.C. testified that McBeth and several others stayed overnight at Q.C.'s house on December 14, 2013. The next morning, Q.C. could not find her car keys, which she normally kept on top of the television. McBeth and Q.C.'s car were gone. Q.C. had not told McBeth that he could take her car. Q.C. called and texted McBeth, asking him to return her car. When McBeth responded, he denied having the car. Q.C. then went to an area she thought McBeth might go to, and she went house-to-house asking if anyone knew McBeth. A woman who knew McBeth agreed to contact him and ask him to come to her house. Q.C. waited in a friend's car. About thirty minutes later, Q.C. saw McBeth drive up in Q.C.'s car, park it, and go into a house. Using her spare set of keys, Q.C. retrieved her car and told police where to find McBeth.

Valencia Howard testified that a lady came to her house asking if she knew McBeth and saying that McBeth had stolen her car. Howard agreed to contact McBeth and ask him to come to her house. After McBeth arrived at Howard's house, she asked him how he had gotten there and McBeth did not reply to her question. When police officers arrived at Howard's house, they found McBeth in a bedroom. The keys to Q.C.'s car were on the bed next to McBeth.

The State was required to prove two elements: that McBeth intentionally drove or operated a motor vehicle without the owner Q.C.'s consent, and that McBeth knew that Q.C. did

not consent to his actions. *See* WIS JI—CRIMINAL 1465. Both elements were established through Q.C.'s testimony. She testified that she did not give McBeth permission to take her car and that she saw McBeth driving her car. When Q.C. contacted McBeth after the car went missing, she told him to return the car and he denied having the car. Circumstantial evidence provided additional support for the jury's finding of guilt. When police arrested McBeth, the keys to Q.C.'s car were on the bed next to him. When Howard asked McBeth how he had gotten to her house, McBeth did not reply.

McBeth asserts that only Q.C. "could place McBeth in the car." McBeth offers no argument, and we can conceive of none, that the State was obligated to present more than one witness to establish that McBeth drove the car. McBeth's challenge to the sufficiency of the evidence fails.

McBeth also complains that the jury heard hearsay evidence. A police officer testified to what Howard told her concerning Q.C.'s request for help in getting McBeth to the house. McBeth's trial attorney objected to the officer's summary of Howard's statement as "all hearsay." The State did not counter McBeth's objection, and the trial proceeded with no further ruling from the circuit court. McBeth's attorney did not request that the officer's testimony be stricken nor did he request any curative jury instruction. *See e.g.* WIS JI—CRIMINAL 150 ("During the trial, the court has ordered certain testimony to be stricken. Disregard all stricken testimony.").

Because McBeth's trial attorney did not request that the testimony be stricken or ask for a curative instruction, McBeth can only raise this issue on appeal in the context of ineffective assistance of counsel. *See* ***State v. Carprue***, 2004 WI 111, ¶47, 274 Wis. 2d 656, 683 N.W.2d

31. He does not do so, and thus we decline to address this inadequately developed argument. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).[2]

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

[2] Even if we were to consider the issue, we would conclude that any error was harmless and, therefore, McBeth could not establish the requisite prejudice for a successful claim of ineffective assistance of counsel. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984) (a defendant claiming ineffective assistance of counsel must prove both that counsel's performance was deficient and that the deficient performance prejudiced the defendant). While the officer's summary of Howard's statement was hearsay, Howard had already testified to what she told the officer. The officer's testimony was redundant.