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DISTRICT I

Amended June 27, 2017
June 12, 2017

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

2015AP2024 State of Wisconsin v. Demetrius M. Boyd
(L.C. # 2008CF81)

Before Brennan, P.J., Brash and Dugan, JJ.

Demetrius Boyd, *pro se*, appeals from the circuit court's order denying his WIS. STAT. § 974.06 (2015-16) motion seeking a new trial.[1] Boyd argues that he should be retried based on newly discovered evidence. After 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.

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[1] The Honorable Jeffrey A. Wagner decided the motion at issue in this case. The Honorable Jeffrey A. Conen presided over the 2008 jury trial and sentenced Boyd.

All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Boyd was convicted, after a jury trial, of twenty crimes that were committed over a two-day period in January 2008. The first set of crimes occurred at about 9:00 p.m., when Boyd and two co-defendants robbed three men outside a liquor store and stole one of the victims' cars, a Nissan Maxima. Later that night, Boyd battered his girlfriend and threatened her with a shotgun. Still later, Boyd was driving the Maxima when a police officer observed a traffic violation. The resulting pursuit of the Maxima led to Boyd's arrest, as we explained in our appellate decision affirming Boyd's convictions:

> [A] police officer, Michael Vagnini, later saw [the] Maxima run through a stop sign, and tried to stop the car. After chasing the Maxima at speeds reaching some eighty miles per hour, Vagnini told the jury that a man jumped from the car while it was still moving, albeit slowly, and, after a foot chase, Vagnini caught him. The man was Boyd. When captured, Boyd had [one victim's] credit and debit cards and … driver's license, and also [a second victim's] check and credit cards.
>
> After his arrest, Boyd voluntarily gave the police a DNA sample. A technician employed by the State Crime Laboratory testified that she matched Boyd's sample to DNA found on the Maxima's steering wheel.
>
> Boyd testified and denied all the charges. He told the jury that he was just standing around when Vagnini stopped the Maxima, which he denied driving, and that the officers planted the victims' property on him. He admitted, however, that he had earlier told the police that he was in the Maxima with two other men who gave him the victims' cards, testifying that he told the police "several different stories" about the cards. He also claimed that he was at [his girlfriend's] house "an hour of 9:00" th[at] night…. He denied knowing [one of his co-defendants].

See ***State v. Boyd***, 2011 WI App 25, ¶¶5-7, 331 Wis. 2d 697, 797 N.W.2d 546.

In May 2015, Boyd filed the WIS. STAT. § 974.06 motion for postconviction relief that is the subject of this appeal. The motion alleged that newly discovered evidence concerning Vagnini bolstered Boyd's claim that the officer put the victims' property in Boyd's pocket when

he was arrested. The motion asserted: "Vagnini was recently convicted for misconduct regarding illegal searches and in those charges [his] actions mirror the same misconduct that le[]d up to my false arrest and mistaken identity."[2] The motion did not provide any additional details about Vagnini's convictions. The motion also suggested, without elaboration, that Vagnini "violated [Boyd] in the worst way."[3]

The State opposed the motion. In its response, it provided additional details about Vagnini's criminal convictions, stating: "Vagnini was convicted of multiple counts of illegal cavity and strip searches" in Milwaukee County Circuit Court Case No. 2012CF4984.

The circuit court denied Boyd's motion without a hearing. It concluded that Boyd's motion failed to satisfy the requirements of a newly discovered evidence claim and that "there is no reasonable probability that evidence of Officer Vagnini's subsequent convictions would have altered the jury's verdict." With respect to Boyd's suggestion that he was subjected to an illegal strip search, the circuit court said that "[a]t best, the defendant's allegations against Officer Vagnini may be grounds for a civil action against the officer or further criminal proceedings, but they do not constitute newly discovered evidence in this case." This appeal follows.

At the outset, we note that Boyd's appellate brief presents numerous arguments that were not raised at the circuit court. For instance, he challenges the legal basis for the traffic stop and alleges that another detective tried to "cover … Vagnini['s] tracks by coerc[ing] witnesses to

[2] Boyd's motion and briefs, which were handwritten, frequently use capital letters. Throughout this decision, we have altered the capitalization where necessary for easier reading.

[3] Boyd's circuit court reply brief provided additional details, asserting that Vagnini conducted an illegal body cavity search of Boyd's "private areas."

make false statements against Boyd." We decline to address issues Boyd is raising for the first time on appeal. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997) ("As a general rule, this court will not address issues for the first time on appeal."). Furthermore, to the extent we do not address a particular issue or subissue, we reject it because it is unpersuasive, undeveloped, or inadequate. *See* ***League of Women Voters v. Madison Cmty. Found.***, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 707 N.W.2d 285 (we do not decide undeveloped arguments); ***Vesely v. Security First Nat'l Bank of Sheboygan Trust Dep't***, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593 (Ct. App. 1985) (we do not decide inadequately briefed arguments).

As noted, the circuit court denied Boyd's WIS. STAT. § 974.06 motion without a hearing. Whether a § 974.06 motion is sufficient on its face to entitle a defendant to an evidentiary hearing is a question of law that appellate courts review *de novo*. ***State v. Balliette***, 2011 WI 79, ¶18, 336 Wis. 2d 358, 805 N.W.2d 334. ***Balliette*** explained:

> If the motion raises sufficient facts that, if true, show that the defendant is entitled to relief, the circuit court must hold an evidentiary hearing. However, if the motion does not raise such facts, "or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief," the grant or denial of the motion is a matter of discretion entrusted to the circuit court.

Id. (citations omitted). On appeal, we consider *de novo* whether a postconviction "motion on its face alleges sufficient material facts that, if true, would entitle the defendant" to an evidentiary hearing. ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

"The decision to grant or deny a motion for a new trial based on newly discovered evidence is committed to the circuit court's discretion. A circuit court erroneously exercises its discretion when it applies an incorrect legal standard to newly discovered evidence." ***State v.***

Plude, 2008 WI 58, ¶31, 310 Wis. 2d 28, 750 N.W.2d 42 (citation and hyphens omitted). To obtain a trial based on newly discovered evidence, a defendant must establish that: "(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative." ***Id.***, ¶32 (quotation marks and citation omitted). If the defendant establishes all four of these criteria, then the court must determine "whether a reasonable probability exists that had the jury heard the newly discovered evidence, it would have had a reasonable doubt as to the defendant's guilt." ***Id.*** (hyphen omitted). This determination is a question of law. ***Id.***, ¶33.

At the circuit court and on appeal, the State argues that Boyd's motion failed to allege sufficient facts demonstrating the third ***Plude*** factor: that the newly discovered evidence is material to an issue in the case. *See* ***id.***, ¶32. We agree with the State. Boyd's motion provided no details about Vagnini's convictions and did not adequately explain how the convictions affected Boyd's case. In two responses to the State's circuit court brief, Boyd provided additional argument, suggesting that Vagnini's trial testimony "cannot be trusted." Boyd also continued to allege that Vagnini conducted an illegal body cavity search of Boyd, although Boyd acknowledged that he "conceal[ed]" this evidence until now to "spare [him]self from further humiliation at trial." Having examined Boyd's circuit court filings, we conclude that they do not adequately explain how the newly discovered evidence—Vagnini's convictions for illegal body cavity and strip searches—was material to Boyd's case. Boyd was not entitled to an evidentiary hearing on his newly discovered evidence motion. *See* ***Balliette***, 336 Wis. 2d 358, ¶18.

Moreover, even if we assume *arguendo* that the four newly discovered evidence criteria are present, Boyd's motion also fails because there is no "reasonable probability … that had the jury heard the newly discovered evidence, it would have had a reasonable doubt as to the

defendant's guilt." *See* ***Plude***, 310 Wis. 2d 28, ¶32 (hyphen omitted). Both of the men who committed the armed robbery with Boyd testified against him, and the jury viewed a videotape of the robbery. Further, the jury heard testimony that the victims' stolen credit cards and identification cards were in Boyd's possession when he was arrested. The jury also heard evidence linking Boyd to the vehicle that was stolen during the robbery: Boyd's DNA was found on the steering wheel. In addition, both Boyd and his ex-girlfriend testified that they rode around together in the Maxima earlier in the evening before the stolen vehicle was pulled over by Vagnini.[4] There is not a reasonable probability that the introduction of the newly discovered evidence would have created "a reasonable doubt as to the defendant's guilt." *See* ***id.***

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals

[4] As noted, Boyd testified that he happened to be standing on the street when he saw officers pursue the Maxima; he denied being in the stolen vehicle at that time.