COURT OF APPEALS
DECISION
DATED AND FILED

March 14, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP3292-CR **Cir. Ct. No. 2002CF4580**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTOINE D. EDWARDS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN A. FRANKE, Judge.[1] *Affirmed*.

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

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[1] Antoine D. Edwards's notice of appeal says that he is appealing from an order denying his postconviction motion. We construe his notice of appeal to also encompass the judgment of conviction.

¶1 FINE, J. Antoine D. Edwards appeals *pro se* from his first-degree-reckless-homicide-while-using-a-dangerous-weapon conviction, as a party to a crime. *See* WIS. STAT. §§ 940.02(1), 939.63, 939.05. Edwards claims that the trial court violated his right to be present at his trial, and that it erred when it denied his ineffective-assistance-of-counsel claims without a hearing under ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979). He also claims that: (1) his due-process and equal-protection rights were violated by an incomplete trial-court record; (2) the evidence was insufficient to support his conviction; (3) the trial court erroneously exercised its sentencing discretion; and (4) his conviction should be vacated in the interest of justice.[2] We affirm.

I.

¶2 Edwards was accused of shooting and killing Charles Jones on August 9, 2002, in Milwaukee. At the trial, ten-year-old Quade Workman testified that on August 9, 2002, he was standing on the upstairs porch to his house, which overlooks an alley, when he saw Edwards chase down the alley, and with a black handgun shoot at, a man carrying grocery bags. The boy also testified that John Edwards, Antoine Edwards's brother, who, according to Workman, was sitting in a brown Chevrolet in the alley, also shot at the running man. According to Workman, after the man fell, Antoine Edwards got into John Edwards's car, and they drove away.

[2] Edwards has also sprinkled his various submissions to the trial court and on appeal with tangential assertions that are not developed, and, accordingly, we do not discuss. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147, 151 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal."); ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992) (appellate court may "decline to review issues inadequately briefed").

¶3 Lucretia Workman, Quade Workman's mother, testified that she was walking to a grocery store on August 9, 2002, around 10:20 a.m., when she saw Antoine Edwards standing next to the passenger side of a "tanish-brown" Chevrolet talking to the driver, John Edwards. According to Lucretia Workman, Antoine Edwards then walked south on Third Street. She further testified that, around that time, she also saw a man with two grocery bags leave the grocery store and walk south on Third Street. According to Lucretia Workman, John Edwards then did a u-turn in the parking lot of a laundromat and drove south onto Third Street.

¶4 Lucretia Workman testified that as she walked to the grocery store, she heard seven or eight gunshots. She told the jury that she then ran toward the alley between Second and Third Streets, but stopped because she saw the man running down the alley from the grocery store. According to her testimony, the man ran a few more steps and fell. Lucretia Workman testified that she then ran back to her house, where she saw her son Quade standing on the upstairs porch. Lucretia Workman told the jury that "[e]verything in the alley" was visible from the upstairs porch.

¶5 Detective Gilbert Hernandez testified that on August 14, 2002, he and his partner interviewed Tiffany Taylor, Antoine Edwards's then-girlfriend. Taylor told them that Antoine Edwards had spent the night at her house on August 8, 2002. On August 9, 2002, John Edwards came over and Antoine Edwards left with him. According to Hernandez, Taylor told them that when Antoine and John Edwards returned around 11:00 a.m., she knew that something was wrong because they were angry and excited. Hernandez testified that Taylor told them that the brothers changed their clothing "real fast," and that John Edwards then wrapped up two handguns in a shirt and hid them in the attic.

¶6 A Milwaukee police officer testified that he and his partner searched Taylor's house on August 14, 2002, and found in the attic a .25 caliber semiautomatic pistol and a .38 caliber revolver. A firearms expert testified that the casings recovered from the scene matched the test-fired casings from the .25 caliber pistol and the .38 caliber revolver. A detective testified that Jones was killed by a .25 caliber bullet and a .38 caliber bullet jacket was found in the alley where Jones was killed.

¶7 Antoine Edwards did not testify. In his defense, he called Detectives Lawrence DeValkenaere and Gary Temp to testify about their interviews with Mildred Willis, who claimed to have seen the shooting. DeValkenaere testified that Willis told him that she saw from her front door John Edwards drive up to a man with grocery bags and shoot at him from the driver's side window of the car. She also told the detective that she did not see Antoine Edwards either in the alley or shoot the victim. Temp testified that Willis told him that she saw only one person in the car, John Edwards, and that she did not see Antoine Edwards in the 3400 block of North Third Street "at all."

¶8 As we have seen, a jury found Antoine Edwards guilty of first-degree reckless homicide, with a dangerous weapon, as a party to a crime. In March of 2003, the trial court sentenced him to forty-eight years in prison, with thirty-two years of initial confinement and sixteen years of extended supervision. After Antoine Edwards was sentenced, John Edwards pled guilty to second-degree reckless homicide. The trial court sentenced John Edwards in July of 2003 to twenty years in prison, with thirteen years of initial confinement and seven years of extended supervision.

¶9 After John Edwards pled guilty, Antoine Edwards filed a postconviction motion under WIS. STAT. § 809.30 seeking a new trial based on what he alleged was newly-discovered evidence. He claimed that he learned after his trial that his brother, John Edwards, was willing to testify that he, John Edwards, was the only person who shot at the victim. To support his motion, Antoine Edwards submitted an affidavit from John Edwards dated December 11, 2003, in which John Edwards averred that he shot at the victim with two handguns, a ".25 s[e]mi-automatic and a .38 special." John Edwards further claimed that he was "certain" that Antoine Edwards was "in no way involved in the shooting," and that his brother "did not know I was the shooter prior to, during, and after his conviction until recently."

¶10 The trial court denied Antoine Edwards's motion, concluding, *inter alia*, that Antoine Edwards did not show that his brother's testimony would have made a difference:

> The exculpatory testimony of a co-defendant that first surfaces after a trial has minimal credibility. While a "corroboration" requirement has not been applied to the post-trial affidavit of a co-defendant, such evidence should be viewed with at least as much suspicion as the recanted testimony of a victim or accomplice. Co-defendants should not be able to pool their post-conviction resources and decide which one of them ought to get a new trial.
>
> Not only is John Edward[s]'s affidavit both implausible and circumstantially suspicious, it is completely inconsistent with the testimony of witnesses at trial. There is no particular reason to believe that the witnesses would have deliberately lied about their observations of defendant Antoine Edwards, but there are compelling reasons to believe that John Edwards is motivated, after his conviction and sentencing, to falsely exonerate his brother, who received the far more significant sentence.

(Citations omitted.) *See* ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707, 711 (1997) (defendant must show that a reasonable probability exists that a different result would be reached on retrial).

¶11 After the trial court denied the postconviction motion, Antoine Edwards's postconviction lawyer moved to withdraw, asserting that an appeal would lack arguable merit. The trial court granted the motion, and Antoine Edwards filed a *pro se* WIS. STAT. § 809.30 postconviction motion seeking a new trial on multiple grounds, including ineffective assistance of trial and appellate counsel. He was told "the risks and consequences of proceeding *pro se*." As we have seen, the trial court denied the motion without a ***Machner*** hearing. We now turn to Antoine Edwards's contentions.

II.

A. *Right to be Present.*

¶12 Antoine Edwards asserts that his constitutional and statutory rights to be present at every stage of his trial were violated because he was not present at his arraignment or three pre-trial conferences. *See* ***Leroux v. State***, 58 Wis. 2d 671, 689, 207 N.W.2d 589, 599 (1973) ("An accused has the right under art[icle] I, sec[tion] 7 of the Wisconsin Constitution and the [S]ixth and [F]ourteenth Amendments of the United States Constitution to be present during his trial."); WIS. STAT. § 971.04 (when defendant is to be present). We disagree.

¶13 The Record shows that Antoine Edwards was present at his arraignment. Moreover, a defendant is not required to be present at all proceedings. Rather, the defendant's presence is:

> required only to the extent a fair and just hearing would be thwarted by his absence…. The presence of a defendant must bear a reasonably substantial relationship to the opportunity to defend. The Constitution does not assure the privilege of presence when presence would be useless, or the benefit but a shadow.

Leroux, 58 Wis. 2d at 690, 207 N.W.2d at 600 (citation and internal quotation marks omitted); *see also* WIS. STAT. § 971.04, Comment ("The section recognizes that at certain hearings, such as arguments on matters of law and calendaring, a defendant need not be present.").

¶14 In this case, nothing of substance happened at the pre-trial conferences held in Antoine Edwards's absence. At the first conference, a final pre-trial date was set; at the second conference, the final pre-trial date was re-scheduled to give the defense more time to locate and interview witnesses; and, at the third conference, the trial court adjourned the trial date, and Antoine Edwards's lawyer filed a notice of alibi and list of projected jury instructions. Antoine Edwards's right to defend himself was not impaired. Thus, his absence did not violate his right to be present.

B. ***Machner*** *Hearing.*

¶15 Antoine Edwards claims that the trial court erred when it denied his ineffective-assistance-of-counsel claims without a ***Machner*** hearing. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984) (defendant claiming ineffective assistance must establish that: (1) the lawyer gave deficient performance, and (2) the defendant suffered prejudice as a result). We disagree.

¶16 A trial court must hold a ***Machner*** hearing if the defendant alleges facts that, if true, would entitle the defendant to relief. ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 576, 682 N.W.2d 433, 437. Whether a motion alleges

facts that, if true, would entitle a defendant to relief is a question of law that we review *de novo*. ***Ibid.*** If, however, "the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing." ***Ibid.*** Antoine Edwards was not entitled to a ***Machner*** hearing on his ineffective-assistance claims, and those claims are, as a matter of law, without merit.

1. Ineffective Assistance of Trial Counsel.

¶17 First, Antoine Edwards claims that his trial lawyer was ineffective because the lawyer did not call Mildred Willis who, as we have seen, told the police that she did not see Antoine Edwards at the scene of the shooting. As we have also seen, however, Willis's version of the shooting was presented to the jury through the detectives' testimony, and Antoine Edwards does not show how Willis's testimony would have been different from what the detectives told the jury she said.[3]

[3] In his reply brief, Antoine Edwards claims that the detectives' testimony was insufficient because they did not:

> testify about seeing the victim going and coming from the store; did not testify about seeing the ten year old child and his mother and whether the child was in a position to see what he claimed to have seen; did not testify about her personally seeing the mother spanking the ten year old boy for lying to her when she ask [*sic*] him a question; did not testify about her personal knowledge of whether one person was doing the shooting as opposed to only seeing one but not knowing whether the other person was somewhere she could not see him as is being suggested by the state; [and] did not testify about the amount of time it took the ten year old child's mother to come to the scene of the shooting to see [the] defendant, as opposed to the amount of time testified to by the mother.

(continued)

¶18 Second, Antoine Edwards complains that his trial lawyer did not file a motion under ***Miranda v. Arizona***, 384 U.S. 436 (1966), and ***State ex. rel Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965) (voluntariness), to suppress a statement that he gave to the police, in which he claimed that he was not involved in the shooting. He claims that the police ignored his requests for a lawyer, and that he began to "fear for his physical well-being when he saw that the officers had no regard for the law." He further contends that he was not able to testify at his trial because the State would have "confronted him with the statements to make credibility between him and the officers an issue." Antoine Edwards again fails to show prejudice under ***Strickland***. The State did not offer his statement into evidence at the trial, and he does not show how his exculpatory statement would have been used to impeach his credibility had he testified.

¶19 Third, Antoine Edwards claims that his trial lawyer was not present at, and did not challenge, an allegedly suggestive photographic lineup. He contends that the photographic lineup was impermissibly suggestive because his name and birthday were "on it" and Lucretia Workman "suggest[ed] to [Quade Workman] whom to identify." This claim fails for two reasons. First, the United States and Wisconsin Constitutions do not require that a defendant have counsel at a lineup prior to the initiation of adversary judicial criminal proceedings. *See* ***Kirby v. Illinois***, 406 U.S. 682, 689 (1972); ***State v. Taylor***, 60 Wis. 2d 506, 522–523, 210 N.W.2d 873, 882 (1973). Second, Antoine Edwards does not offer any

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Antoine Edwards does not, however, point to any evidentiary material or offer-of-proof supported by an affidavit or other evidentiary material to back up these assertions. Moreover, we will not consider arguments raised for the first time in a reply brief. *See* ***Sisters of St. Mary v. AAER Sprayed Insulation***, 151 Wis. 2d 708, 723–724 n.4, 445 N.W.2d 723, 729 n.4 (Ct. App. 1989) (appellate court will not review an issue raised for the first time in a reply brief).

proof beyond his mere assertion that his name and birthday were included in the photographic lineup or that Quade Workman's mother told him whom to identify. *See* ***Powell v. State***, 86 Wis. 2d 51, 65–66, 271 N.W.2d 610, 617 (1978) (defendant seeking to suppress eyewitness identification has initial burden of establishing that the identification procedure was impermissibly suggestive).

¶20 Fourth, Antoine Edwards contends that his trial lawyer was not present when the trial judge allegedly questioned in chambers and off the record Quade Workman about his ability to recognize the difference between the truth and a lie. This claim is belied by the Record. The Record shows that, before Quade Workman testified, the trial court explained and administered the oath to Quade Workman in the presence of Antoine Edwards's lawyer. Moreover, the portion of the Record that Antoine Edwards points to in his brief-in-chief on appeal is simply Quade Workman's testimony. There is nothing in the Record supporting Antoine Edwards's contention that the trial court questioned Quade Workman in chambers.

¶21 Fifth, Antoine Edwards claims that his trial lawyer should have challenged allegedly inconsistent statements made by three witnesses at the trial—Lucretia Workman, Quade Workman, and Tiffany Taylor. Antoine Edwards does not show, beyond his unsupported assertion, how their trial testimony was inconsistent with things they may have said earlier. In connection with Lucretia Workman, Antoine Edwards argues that her trial testimony was "dramatically" different from her statement to the police, but does not show how or why. He also claims that he told his trial lawyer that he had witnesses who were willing to testify at the trial that Lucretia Workman "had made it known in the neighborhood" that she would not cooperate with the police unless both Antoine and John Edwards were put in jail. He does not, however, point to any evidentiary

material, by affidavit or otherwise, that identifies these persons or what they would have said if they had been called to testify. *See* ***Allen***, 2004 WI 106, ¶24, 274 Wis. 2d at 586, 682 N.W.2d at 442 (postconviction motion must contain sufficient material facts, *i.e.*, the name of the witness, the reason the witness is important, and the facts that can be proven).

¶22 Regarding Quade Workman, Antoine Edwards claims that Quade Workman's testimony conflicted with what he had earlier told the police, his trial testimony was internally inconsistent, and that Quade Workman admitted that he was told what to say. Antoine Edwards's first two claims are conclusory and undeveloped. He does not show how Quade Workman's testimony conflicted with what he had earlier told the police, or how or why Quade Workman's testimony was internally inconsistent. Further, Quade Workman testified on cross-examination that "a lot of people talk[ed]" to him about the shooting, including the police and his mother, but told the jury on re-direct examination that no one told him what to say in court.

¶23 Finally, regarding Tiffany Taylor, Antoine Edwards contends that his trial lawyer should have "challeng[ed]" her testimony in some unspecified way. Taylor denied on direct-examination, however, that she told Detective Hernandez or his partner that Antoine Edwards was at her house on August 8 or 9, 2002. Rather, she claimed that John Edwards came to her house by himself on August 9, 2002, with two handguns and, without her knowledge, hid them there. The jury thus heard the inconsistency and was able to assess it.

¶24 Sixth, Antoine Edwards claims that his trial lawyer should have "interview[ed], investigat[ed], or call[ed] John Edwards as a defense witness." Antoine Edwards argues that his trial lawyer should have known, based on the

affidavit submitted to the trial court in connection with Antoine Edwards's post-trial newly-discovered-evidence claim, that John Edwards wanted to testify that Antoine Edwards was "in no way involved in the shooting."[4]

¶25 John Edwards's affidavit was executed on December 11, 2003, approximately ten months after Antoine Edwards's trial. John Edwards does not claim in the affidavit that he told Antoine Edwards's lawyer before or during the trial that Antoine Edwards was not involved in the shooting, or that he, John Edwards, who was still facing charges to which he ultimately pled guilty, would have been willing to testify. *See* ***State v. McConnohie***, 121 Wis. 2d 57, 71, 358 N.W.2d 256, 263 (1984) (defendant's right to compulsory process is trumped by potential witness's right against self-incrimination). Moreover, as the trial court pointed out when it denied Antoine Edwards's newly-discovered-evidence claim, the evidence of Antoine Edwards's guilt—both eye-witness and physical—was overwhelming. Thus, Antoine Edwards has not only failed to show that John Edwards would have testified at Antoine Edwards's trial despite John Edwards's right not to incriminate himself, but also that not calling John Edwards as a witness made the result of the trial unreliable.

¶26 Seventh, Antoine Edwards contends that his trial lawyer did not timely review with him his presentence-investigation report. This claim is belied by the Record. At sentencing, Antoine Edwards's lawyer told the trial court that she had reviewed the report with Antoine Edwards, and Antoine Edwards told the

[4] Antoine Edwards also relies on a letter John Edwards wrote to Antoine Edwards's postconviction lawyer in which John Edwards claims that he was the sole shooter. This letter, however, is not in the Record on appeal. Accordingly, we do not consider it. *See* ***Pettit***, 171 Wis. 2d at 646, 492 N.W.2d at 642 ("appellate court's review is confined to those parts of the record made available to it").

trial court he had gone over the report with his lawyer. Antoine Edwards also claims that his trial lawyer did not object to any alleged errors in the report. This claim is also belied by the Record. Antoine Edwards's lawyer pointed to several facts in the report that Antoine Edwards disagreed with and Antoine Edwards told the trial court that he did not have any more corrections.

¶27 Eighth, Antoine Edwards claims that his trial lawyer should have objected on jurisdictional grounds because the trial court did not make a finding of probable cause at the preliminary examination. *See* WIS. STAT. § 970.03(9) ("If the court does not find probable cause to believe that a felony has been committed by the defendant, it shall order the defendant discharged forthwith."). The Record shows, however, that Antoine Edwards waived his right to a preliminary examination and stipulated that the State could establish probable cause for the first-degree-reckless-homicide charge. Indeed, the Preliminary Hearing Questionnaire and Waiver Form that Antoine Edwards signed provides that: "I understand that by waiving the preliminary hearing, I am conceding that the State can establish probable cause, and that I will be ordered to stand trial."

¶28 Finally, Antoine Edwards argues that he was prejudiced by the aggregate of his lawyer's errors. Antoine Edwards's ineffective-assistance claims fail on the merits. That ends our inquiry. *See* ***State v. Thiel***, 2003 WI 111, ¶61, 264 Wis. 2d 571, 606, 665 N.W.2d 305, 322–323 ("each act or omission must fall below an objective standard of reasonableness … in order to be included in the calculus for prejudice").

2. Ineffective Assistance of Appellate Counsel.

¶29 Antoine Edwards contends that he was denied the right to an appellate lawyer because his appellate lawyer had what Antoine Edwards claims were two conflicts of interest: (1) the lawyer was paid by a third party, the Office of the State Public Defender, and (2) the lawyer was also a circuit-court commissioner. *See* WIS. STAT. § 757.675. Edwards, however, has not shown that the lawyer "actively represented actual conflicting interests" so that his representation of Antoine Edwards was, therefore, "adversely affected." *See* ***State v. Foster***, 152 Wis. 2d 386, 388, 390–394, 448 N.W.2d 298, 299, 300–302 (Ct. App. 1989).

C. *Due Process and Equal Protection.*

¶30 Antoine Edwards claims that his due-process and equal-protection rights were violated because his appellate lawyer did not give him a complete set of transcripts. As a *pro se* appellant, Antoine Edwards was responsible to make sure that the record on appeal was complete. *See* ***State v. Dietzen***, 164 Wis. 2d 205, 212, 474 N.W.2d 753, 755–756 (Ct. App. 1991) (appellant responsible for assembling and submitting record); ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16, 20 (1992) (*pro se* litigants "bound by the same rules that apply to attorneys on appeal"). Antoine Edwards has not shown that any request he made to court personnel for transcripts was rebuffed. Apparently, the transcripts were never transcribed, and, as a *pro se* appellant, it was Antoine Edwards's responsibility to request that they be transcribed, and, if he could not afford them, request that they be given to him for free. *See* ***State ex rel. Girouard v. Circuit Court for Jackson County***, 155 Wis. 2d 148, 159, 454 N.W.2d 792, 797 (1990) (indigent appellant entitled to transcript without payment if he or she "has

an arguably meritorious claim"). The Record does not reveal that he did any of this.

D. *Sufficiency of the Evidence.*

¶31 Antoine Edwards contends that the evidence was insufficient to convict him because the only evidence "offered by the state" was the testimony of Quade Workman, a ten-year-old child whom he alleges "did not see the shooting incident; it was physically impossible for him to have seen the shooting through buildings blocking where the killing took place."[5] Antoine Edwards argues that this evidence is insufficient when "weigh[]ed against" the statements by Mildred Willis that Antoine Edwards was not at the scene of the shooting and John Edwards's claim that he committed the crime alone. We disagree.

¶32 A jury verdict will be upheld unless, "considering all credible evidence and reasonable inferences therefrom in the light most favorable" to the verdict, "there is no credible evidence to sustain" it. WIS. STAT. RULE 805.14(1) (made applicable to criminal cases by WIS. STAT. § 972.11(1)).

> [A]n appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier

[5] Antoine Edwards also claims that Quade Workman's testimony was not credible because he "shamefully acknowledged during sworn testimony that he was told what to testify to by his mother." Antoine Edwards does not point to anything in the Record to support this claim and, as we have seen, Quade Workman testified that no one told him what he should say at the trial.

> of fact should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis. 2d 493, 507, 451 N.W.2d 752, 757–758 (1990) (citation omitted).

¶33 Here, other than pointing to evidence that was not presented at trial, which we do not consider, *see* ***State v. Koller***, 87 Wis. 2d 253, 266, 274 N.W.2d 651, 658 (1979) (test for sufficiency of evidence is "whether the evidence adduced, believed, and rationally *considered by the jury* was sufficient to prove the defendant's guilt beyond a reasonable doubt") (emphasis added), Antoine Edwards's main contention is that Quade Workman's testimony was not credible. Absent a showing, however, that a witness's testimony was incredible as a matter of law, *see* ***Thomas v. State***, 92 Wis. 2d 372, 382, 284 N.W.2d 917, 923 (1979) (only when the testimony of a witness is inherently or patently incredible can an appellate court substitute its judgment for that of the jury), the determination of witness credibility is for the jury, *see* ***Poellinger***, 153 Wis. 2d at 504, 451 N.W.2d at 756. Further, as we have already recounted, the evidence at trial was replete with support for the jury's verdict.

E. *Sentencing.*

¶34 Antoine Edwards claims that the trial court erroneously exercised its sentencing discretion because it imposed a sentence that is harsher than John Edwards's. He contends that the trial court gave him a longer sentence than his

brother because: (1) he refused to admit guilt or show remorse, and (2) he exercised his right to a jury trial.[6] We disagree.

¶35 We will not disturb a sentence imposed by the trial court unless it erroneously exercised its discretion. ***Ocanas v. State***, 70 Wis. 2d 179, 183, 233 N.W.2d 457, 460 (1975). A trial court erroneously exercises its discretion only where "the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Id.***, 70 Wis. 2d at 185, 233 N.W.2d at 461.

¶36 A sentencing court is not bound by the sentence imposed on a co-defendant. *See* ***id.***, 70 Wis. 2d at 188, 233 N.W.2d at 462. A disparity in sentences is not improper if the individual sentences are based on the three main sentencing factors, the gravity of the offense, the character of the defendant, and the need to protect the public. *See* ***State v. Toliver***, 187 Wis. 2d 346, 362, 523 N.W.2d 113, 119 (Ct. App. 1994). The court may also consider the following factors:

> "(1) Past record of criminal offenses; (2) history of undesirable behavior pattern; (3) the defendant's personality, character and social traits; (4) result of presentence investigation; (5) vicious or aggravated nature of the crime; (6) degree of the defendant's culpability;

[6] Antoine Edwards also claims that the trial court relied on allegedly inaccurate information in the presentence-investigation report. As we have seen, however, this claim is not supported by the Record. Moreover, Antoine Edwards does not point to what information in the presentence-investigation report he claims was inaccurate or show that the sentencing court actually relied on any inaccurate information. *See* ***State v. Groth***, 2002 WI App 299, ¶22, 258 Wis. 2d 889, 906, 655 N.W.2d 163, 171 (defendant who alleges that he was sentenced based on inaccurate information must show that: (1) the information was inaccurate, and (2) the trial court actually relied on the inaccurate information at sentencing).

> (7) defendant's demeanor at trial; (8) defendant's age, educational background and employment record; (9) *defendant's remorse*, repentance and cooperativeness; (10) defendant's need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention."

State v. Harris, 119 Wis. 2d 612, 623–624, 350 N.W.2d 633, 639 (1984) (emphasis added; quoted source omitted).

¶37 Antoine Edwards does not point to any evidence that the trial court sentenced him because: (1) he refused to admit guilt or show remorse, or (2) he exercised his right to a jury trial. *See* ***State v. Borrell***, 167 Wis. 2d 749, 782, 482 N.W.2d 883, 895 (1992) (defendant claiming his sentence was unwarranted must "show some unreasonable or unjustified basis in the record for the sentence imposed"). The trial court considered the seriousness of the offense, noting that "[t]his was an extremely serious First Degree Reckless Homicide. The recklessness was extraordinarily grave, and the lack of regard for human life was extremely serious."

¶38 Next, it considered Antoine Edwards's character, including his criminal record, drug use, involvement with gangs, age, lack of employment or education, and remorse:

> You say you are remorseful. Remorse is a word that is typically used when someone is more than sorry. I am sorry for these people, but that doesn't mean I had anything to do with killing their family member. Remorse typically means you are sorry for something that you did. You are remorseful about what you did.
>
> If that's the way you meant it, then we have the closest thing to a confession that we've had in this case. If you simply meant you're sorry the way any citizen would be sorry for them, then we have something else.

Significantly, in connection with Antoine Edwards's contention that he was punished because he pled not guilty, the trial court did not consider as an "aggravating factor" Antoine Edwards's decision not to provide a motive for the shooting because, as it told Antoine Edwards at sentencing, "you are entitled to remain silent."

¶39 Finally, the trial court considered the need to protect the community and deter others from committing similar crimes. It noted that the neighborhood was also victimized by the crime because "when we have another one of these senseless shootings out on the street," people "lose some more of whatever sense of security [they] have, have to fear that much more for their own safety, the safety of their own children, the safety of anyone who's walking around out there." The trial court did not erroneously exercise its sentencing discretion.

F. *Interest of Justice.*

¶40 Finally, Antoine Edwards asks this court to order a new trial in the interest of justice based on the cumulative effect of the errors discussed above. *See* WIS. STAT. § 752.35. We disagree—either separately or concurrently, the matters Antoine Edwards points to did not deprive him of a fair trial. *See* ***Mentek v. State***, 71 Wis. 2d 799, 809, 238 N.W.2d 752, 758 (1976).

By the Court.—Judgment and order affirmed.

Publication in the official reports is not recommended.