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DISTRICT III

September 6, 2023

To:

Hon. James A. Morrison
Circuit Court Judge
Electronic Notice

Thomas Brady Aquino
Electronic Notice

Sheila Dudka
Clerk of Circuit Court
Marinette County Courthouse
Electronic Notice

DeShea D. Morrow
Electronic Notice

Earl E. Rugg III
1317 Roosevelt Road
Niagara, WI 54151

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

2021AP1094-CRNM State of Wisconsin v. Earl E. Rugg, III
(L. C. No. 2020CF113)

Before Stark, P.J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Counsel for Earl E. Rugg III has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 concluding that no grounds exist to challenge Rugg's convictions for criminal trespass to a dwelling with use of a dangerous weapon, disorderly conduct with use of a dangerous weapon, possession of drug paraphernalia, and misdemeanor bail jumping. Rugg was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967),

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Rugg with six offenses: burglary of a dwelling with use of a dangerous weapon; second-degree recklessly endangering safety with use of a dangerous weapon; criminal trespass with use of a dangerous weapon; disorderly conduct with use of a dangerous weapon; possession of drug paraphernalia; and misdemeanor bail jumping. The first two counts were felonies, while the remaining counts were misdemeanors.

At Rugg's jury trial, evidence was introduced that on April 11, 2020, Rugg entered a home where Heidi and Brian,² a married couple, lived with their children. Rugg came into the family's mudroom without Heidi and Brian's consent, holding a hatchet and yelling in an aggressive manner, "[G]ive me Ayla." Brian recognized Rugg's voice from an encounter the prior month, during which a man had come to the family's home at around 9:00 p.m., pounded on their door, and asked for "Ayla."

Brian described Rugg as being in an "aggressive stance" during the April 11 incident. Because Brian perceived Rugg to be a threat, he drew a pistol that he was carrying and pointed it at Rugg, repeatedly yelling at Rugg to "get out, [or] I will kill you." Rugg initially yelled back, but he then backed out of the door into the driveway. Rugg remained outside the home, however, and Brian became concerned that Rugg might break into the home's basement door. Brian therefore went outside with a shotgun and confronted Rugg again. While Brian walked

² Pursuant to the policy underlying WIS. STAT. RULE 809.86, we use pseudonyms when referring to the victims in this case.

Rugg away from the house, Rugg “kept ... muttering about Ayla and he knows she’s here, I can hear her, and just saying a lot of nonsense.”

Brian escorted Rugg to a field, at which point sheriff’s deputies arrived and took Rugg into custody. One of the deputies searched Rugg and found a glass pipe in one of Rugg’s pockets of the type commonly used for smoking methamphetamine. Rugg admitted to using methamphetamine earlier that day. Rugg also told the deputy that his girlfriend was in the woods and that, if they were quiet, they would be able to hear her yelling. Rugg further stated that his girlfriend and daughter had been kidnapped by a cartel and were being held in Heidi and Brian’s house. Based on past contacts, the deputy knew that Rugg had a girlfriend or ex-girlfriend named Ayla.

In addition to the above evidence, the parties stipulated at trial that on April 11, 2020, Rugg had a pending misdemeanor criminal case in Brown County, and he was subject to a \$500 cash bond in that case “with the condition that he not commit any law violations.” Following a colloquy with the circuit court regarding his right to testify and his corresponding right not to testify, Rugg chose not to testify in his own defense. Rugg’s trial attorney conceded during his opening statement and closing argument that Rugg was not contesting the four misdemeanor charges; counsel argued, however, that the State had failed to meet its burden of proof regarding the two felony charges.

The jury found Rugg not guilty of the two felony charges but guilty of all four misdemeanors. The circuit court subsequently imposed consecutive sentences of fifteen months’ jail on the criminal trespass charge, nine months’ jail on the disorderly conduct charge, and thirty days’ jail on the drug paraphernalia charge. On the bail jumping charge, the court imposed and

stayed a sentence of nine months' jail and ordered Rugg to serve two years of probation, consecutive to his other sentences.

The no-merit report addresses whether any arguably meritorious issues exist regarding: (1) the circuit court's refusal to allow Rugg to change his plea to guilty on two of the misdemeanor charges shortly before trial; (2) the court's rulings on two relevance objections at trial; (3) the court's granting of the State's request to specify, for purposes of the burglary charge, that the felony Rugg intended to commit when he entered the victims' home was false imprisonment; and (4) the court's exercise of sentencing discretion. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

The no-merit report fails to address whether any issues of arguable merit exist regarding: (1) the circuit court's rulings on pretrial motions; (2) jury selection; (3) the parties' opening statements and closing arguments; (4) the jury instructions, aside from the instruction regarding false imprisonment; (5) the court's colloquy with Rugg regarding his decision not to testify; (6) the sufficiency of the evidence to support the jury's verdicts; and (7) whether Rugg's trial attorney was constitutionally ineffective. Having independently reviewed the record, however, we conclude that none of these potential issues has arguable merit.

In particular, with respect to the sufficiency of the evidence, we note that in order to obtain a conviction on the criminal trespass charge, the State was required to prove that: (1) Rugg intentionally entered the dwelling of another; (2) Rugg entered the dwelling without the consent of someone lawfully on the premises; (3) Rugg entered the dwelling under circumstances tending to provoke a breach of the peace; and (4) Rugg knew that his entry into

the dwelling was without consent and under circumstances tending to create or provoke a breach of the peace and knew that it was the dwelling of another. *See* WIS JI—CRIMINAL 1437 (2017). To obtain a conviction on the disorderly conduct charge, the State needed to prove that: (1) Rugg engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct; and (2) Rugg’s conduct, under the circumstances as they then existed, tended to cause or provoke a disturbance. *See* WIS JI—CRIMINAL 1900 (2022). In addition, for the dangerous weapon enhancer, the State needed to prove that Rugg committed each of these crimes while possessing a dangerous weapon. *See* WIS JI—CRIMINAL 990 (2006).

Uncontroverted evidence was introduced at trial that Rugg entered Heidi and Brian’s home without their consent while wielding a hatchet and yelling aggressively. Evidence was also introduced that Rugg’s conduct caused Heidi and Brian to fear for their safety and caused Brian to draw a firearm because he perceived Rugg to be a threat. This evidence was sufficient to satisfy the elements of the criminal trespass and disorderly conduct charges, each with use of a dangerous weapon.

With respect to the drug paraphernalia charge, the State needed to prove that: (1) Rugg possessed an item; (2) the item was drug paraphernalia; and (3) Rugg possessed drug paraphernalia with the primary intent to use it to ingest, inhale, or otherwise introduce into the human body a controlled substance. *See* WIS JI—CRIMINAL 6050 (2021). The State introduced evidence at trial that one of the deputies involved in Rugg’s arrest found a glass pipe in Rugg’s pocket of the type commonly used for smoking methamphetamine. In addition, the deputy testified that Rugg admitted to using methamphetamine earlier that day. This evidence was sufficient to satisfy the elements of the drug paraphernalia charge.

Finally, to convict Rugg of misdemeanor bail jumping, the State needed to prove that: (1) Rugg was arrested for and charged with a misdemeanor; (2) Rugg was released from custody on bond; and (3) Rugg intentionally failed to comply with the terms of his bond. *See* WIS JI—CRIMINAL 1795 (2018). As noted above, the parties stipulated that on April 11, 2020, Rugg had a pending misdemeanor case in Brown County and that his cash bond in that case required him not to commit any violations of the law. Furthermore, as just discussed, the evidence was sufficient for the jury to find that Rugg committed criminal trespass, disorderly conduct, and possession of drug paraphernalia on that date. The jury could further infer, based on the evidence introduced at trial, that Rugg’s failure to comply with the terms of his bond was intentional. As such, the evidence was sufficient to support the jury’s guilty verdict on the misdemeanor bail jumping charge.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas Brady Aquino is relieved of any further representation of Earl E. Rugg III in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals