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DISTRICT I

February 4, 2025

To:

Hon. Laura Crivello
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Douglas C. McIntosh
Electronic Notice

Christopher P. August
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Marcus E. Cotton 610057
613 N. 36th Street
Lower Level #103
Milwaukee, WI 53208

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

2023AP1692-CRNM State of Wisconsin v. Marcus E. Cotton (L.C. # 2017CF3246)

Before Donald, P.J., Geenen and Colón, JJ.

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).

Marcus E. Cotton appeals a judgment, entered on a jury's verdict, convicting him of taking and driving a vehicle without the owner's consent.¹ His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)² and *Anders v. California*, 386 U.S.

¹ The Honorable Joseph R. Wall presided over the jury trial and sentencing in this matter.

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

738 (1967).³ Cotton received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record as mandated by *Anders*, this court summarily affirms the judgment because there is no arguable merit to any issue that could be pursued on appeal. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Cotton stole S.M.-L.'s vehicle, which was left running in the carport next to her garage. The vehicle was later found abandoned. Surveillance footage showed a suspect, whose arm appeared to be in a sling and who had other distinctive features, open the driver's door of S.M.-L.'s vehicle and drive off.

A detective recognized the person in the video as Cotton, who he believed was recently the victim of a shooting. Detectives showed Cotton still images from the video. When confronted with these images, Cotton denied he was the person pictured and denied stealing the vehicle.

The case proceeded to trial and a jury found Cotton guilty of taking and driving a vehicle without the owner's consent. The circuit court imposed the maximum sentence available: three years of initial confinement and three years of extended supervision. The court additionally ordered that Cotton was eligible to participate in the Challenge Incarceration Program and the Substance Abuse Program after serving twenty-one months of his sentence.

³ The no-merit report was filed by Attorney Douglas C. McIntosh. On January 21, 2025, the court received notice that Attorney Christopher P. August was appointed as counsel for Cotton.

The no-merit report addresses whether the evidence was sufficient to support the jury verdict. A claim of insufficiency of the evidence requires a showing that “the evidence, viewed most favorably to the [S]tate 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). We agree with counsel’s assessment that there would be no arguable merit to an argument that there was insufficient evidence to convict Cotton. The evidence at trial—which included testimony by S.M.-L., the surveillance video, and testimony from multiple detectives—was sufficient to support the verdict.

The no-merit report also addresses the circuit court’s pre-trial evidentiary ruling regarding Facebook posts attributed to Cotton. Cotton objected to three posts: one about going to the south side to find a “whip,” one referring to “stolies,” and one stating, “I need a stolie.”⁴ We have considered whether the evidence related to the Facebook posts constituted improper “other acts” evidence. *See* WIS. STAT. § 904.04(2)(a) (providing that generally, “evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith,” subject to specific exceptions); *State v. Sullivan*, 216 Wis. 2d 768, 772-74, 576 N.W.2d 30 (1998) (explaining other-acts evidence is admissible only if the proponent of the evidence establishes that it is offered for a proper purpose, that it is relevant, and that its probative value is not substantially outweighed by the danger of unfair prejudice).

⁴ A detective testified at trial that cars are referred to as “whips” and stolen cars are referred to as “stolies.”

Here, the circuit court concluded that the evidence was offered for an acceptable purpose—namely, Cotton’s plan—and was relevant. The court additionally held that the evidence “easily passes” the probative value test. We conclude that the circuit court properly applied the three-part test under *Sullivan* and reasonably exercised its discretion to allow the Facebook evidence as admissible “other acts.” *See id.*, 216 Wis. 2d at 780 (reviewing court analyzes a circuit court’s admission of other-acts evidence for an erroneous exercise of discretion).

The no-merit report also discusses the circuit court’s exercise of its sentencing discretion. We are satisfied that the no-merit report properly concludes this issue is meritless. The circuit court considered appropriate sentencing objectives and imposed a sentence based on various sentencing criteria applied to the facts of this case. *See State v. Brown*, 2006 WI 131, ¶26, 298 Wis. 2d 37, 725 N.W.2d 262.

A review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Cotton further in this appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Douglas C. McIntosh and Christopher P. August are relieved of any further representation of Marcus E. Cotton 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