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**DISTRICT II/III**

March 3, 2015

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

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2013AP2560-CRNM      State of Wisconsin v. Lester J. Green (L.C. #2012CF410)

Before Hoover, P.J., Stark and Hruz, JJ.

Counsel for Lester Green has filed a no-merit report pursuant to WIS. STAT. RULE 809.32,<sup>1</sup> concluding no grounds exist to challenge Green's conviction for party to the crime of second-degree sexual assault of an intoxicated victim, as a repeater. Green was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version.

conclude 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 Green with party to the crime of second-degree sexual assault of an intoxicated victim, as a repeater. The charge arose from allegations regarding contact Green and two codefendants had with Christine H. Green's motion to suppress statements made to police officers was denied after a *Miranda-Goodchild*<sup>2</sup> hearing. The matter then proceeded to trial and a jury found Green guilty of the crime charged. Out of a maximum possible forty-six-year sentence, the court imposed a twenty-three-year sentence consisting of eight years' initial confinement and fifteen years' extended supervision.

The record discloses no arguable basis for challenging the denial of Green's motion to suppress his statements to police. Although Green conceded he was given his *Miranda* warnings, he argued his rights were not sufficiently waived, as Green cannot read and can write only his name. Upon review of lower court proceedings involving *Miranda-Goodchild* hearings, this court will not upset the findings of fact unless it appears they are against the great weight and clear preponderance of the evidence. *Norwood v. State*, 74 Wis. 2d 343, 361, 246 N.W.2d 801 (1976). When determining whether a confession or admission is voluntary, we look to the totality of circumstances. *State v. Schneidewind*, 47 Wis. 2d 110, 117, 176 N.W.2d 303 (1970). In order to find a defendant's statement involuntary, "there must be some affirmative evidence of

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<sup>2</sup> A trial court holds a *Miranda-Goodchild* hearing to determine whether a suspect's rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), were honored, and, also whether any statement the suspect made to the police was voluntary. *See State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

improper police practices deliberately used to procure a confession.” *State v. Clappes*, 136 Wis. 2d 222, 239, 401 N.W.2d 759 (1987). In assessing the totality of circumstances, we must balance the personal characteristics of the defendant against any pressures imposed by the police. *Id.* at 236. The relevant personal characteristics of the defendant include that person’s age, education and intelligence, physical and emotional condition, and prior experience with the police. *Id.*

Here, detective Joel Clark testified that as he began to read Green his *Miranda* rights, Green indicated he was already familiar with them. Clark testified that Green had approximately twenty previous arrests or citations, with sixteen different interviews by the Sheboygan Police Department alone. Clark further indicated that in four prior cases, Green waived his *Miranda* rights after the waiver form was read to him. Clark nevertheless read and explained Green’s *Miranda* rights in the present case. Green waived his rights, acknowledged and described his part in the assault, and signed a written statement consistent with his confession.

Clark testified that Green seemed to understand each right read to him, and that if Clark used a word that Green indicated he did not understand, Clark would rephrase it and confirm Green’s understanding. Clark recounted that the interview started at approximately 11 a.m. and lasted approximately seventy-five minutes, during which time Green neither requested nor was denied any “comfort items” such as a drink or bathroom break. Clark testified he did not use force or threats to coerce a confession from Green.

The trial court noted there was no evidence to conclude that Green, who was in his fifties, suffers any mental impairment. The court ultimately determined, based on the totality of the circumstances, that Green had properly been read his *Miranda* rights, that he understood those

rights and that he knowingly waived them. The trial court's findings on this matter are given great deference, and any conflicts in the testimony regarding circumstances surrounding the statements must be resolved in favor of the trial court's findings. *McAdoo v. State*, 65 Wis. 2d 596, 608, 223 N.W.2d 521 (1974). There is no arguable merit to a claim that the trial court erred by finding that Green knowingly, intelligently, and voluntarily waived his *Miranda* rights.

Any challenge to the jury's verdict would also lack arguable merit. When reviewing the sufficiency of the evidence, we must view the evidence in the light most favorable to sustaining the jury's verdict. *See State v. Wilson*, 180 Wis. 2d 414, 424, 509 N.W.2d 128 (Ct. App. 1993). At trial, Christine testified that on the night in question, she went to a couple of bars in Sheboygan. At the second bar, Night Moves, she noticed Green and two younger men sitting at a table and eventually had a drink with them. Christine's memory of the evening following that drink was hazy, but she recalled being pushed into a vehicle and coming in and out of consciousness on the couch in her home. Christine remembered being assaulted vaginally and also remembered two males taking turns shoving their penises in her mouth. She also recalled feeling pain in her uterus, back and breast. When Christine fully regained consciousness, she found three men, including Green, in her home. The men left after she screamed for them to "get out" and started "banging" on the control box for her home security system. Christine added that she did not give anyone permission to sexually touch her.

Clark testified that video surveillance from Night Moves showed Green assisting Christine out of the building on the night of the alleged assault. The jury heard the audio tape of Clark's interview with Green, in which Green described his part in the assault, admitting that he shared a taxi with Christine to her home. Green further indicated that when his codefendants called to ask where he was, Green told them and they later showed up at Christine's home.

Green stated that Christine was sitting on her couch with her eyes closed and appeared to be “drunk/wasted/passed out” when he put his hand inside her pants and inserted his fingers in her vagina. Green claimed he removed his hand after Christine awoke and told him to stop because it hurt. Green stated he saw one of his codefendants put his penis in Christine’s mouth and Green eventually left the home, while his codefendants remained.

Clark read Green a written statement of the confession for his signature, and the statement was moved into evidence. To the extent there was conflicting testimony, it is the jury’s function to decide the credibility of witnesses and reconcile any inconsistencies in the testimony. *Morden v. Continental AG*, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. Moreover, a jury is free to piece together the bits of testimony it found credible to construct a chronicle of the circumstances surrounding the crime. *See State v. Sarabia*, 118 Wis. 2d 655, 663-64, 348 N.W.2d 527 (1984). Further, “[f]acts may be inferred by a jury from the objective evidence in a case.” *Shelley v. State*, 89 Wis. 2d 263, 273, 278 N.W.2d 251 (Ct. App. 1979). The evidence submitted at trial is sufficient to support Green’s conviction.

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Before imposing a sentence authorized by law, the court considered the seriousness of the offense; Green’s character, including his criminal history; the need to protect the public; and the mitigating circumstances Green raised. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it cannot reasonably be argued that Green’s sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal.  
Therefore,

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

IT IS FURTHER ORDERED that attorney Timothy T. O'Connell is relieved of further representing Green in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*