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January 10, 2017

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

2015AP2247-CRNM State of Wisconsin v. David M. DeBlare (L. C. No. 2014CF43)

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

Counsel for David DeBlare has filed a no-merit report concluding no grounds exist to challenge DeBlare's convictions for burglary and felony theft, both as party to a crime, and four counts of bail jumping. DeBlare was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm.

The record discloses no basis for challenging the sufficiency of the evidence supporting the convictions. A state patrol officer testified he was completing a vehicle stop at 2:15 p.m., when a maroon GMC Envoy pulled up twenty yards behind him on the shoulder of Highway 41. The vehicle had run out of gas and DeBlare was in the driver's seat. The officer noticed a distinctive flame design on the vehicle's chrome grill. DeBlare and front-seat passenger Luke Scruton provided identification. A female passenger in the back seat was not identified at the time. Both DeBlare and Scruton were wearing brownish-tan "Carhartt-type" jackets. The officer testified their behavior was suspicious, and noted "both male parties in the front seat immediately lit up a cigarette. They did not want to make eye contact with me." Scruton "sunk in his seat and he didn't want me to ask him any questions, so all indicators to me is that they were very nervous." DeBlare refused the officer's offer to take them for gas, claiming he would call a friend to bring them fuel. About fifteen minutes later, an individual arrived with gas and the GMC Envoy proceeded northbound.

Approximately an hour later, a man wearing a brown jacket knocked on Shannon Verboomen's front door. The individual asked for "Jenny Millner," and claimed he was Millner's ex-boyfriend. Upon being told Jenny Millner did not live there, the man asked how long Verboomen had lived there. After being informed of the answer, the man then left in a GMC Envoy with flames on the chrome grill. There were at least three people in the vehicle. Verboomen continued to watch as the vehicle drove up and down the street several times and stopped in front of the victim's residence. Verboomen called a neighbor who lived between her and the victim.

The neighbor saw a vehicle parked across the street with a flame design in the grillwork. He observed two individuals with brown "Carhartt-type" jackets and ski masks coming out of the

victim's residence carrying a television and a big black box. The individuals made several trips with "stuff" in their hands and then "hightailed" it out of there.

Verboomen also observed the two individuals enter the victim's residence through the service door in the attached garage. The individuals later came out with two bags that looked full. They placed the bags in the vehicle and went back in, coming out with a blue electric guitar before driving off.

Because of the vehicle's unique grillwork, law enforcement issued a request on the Wisconsin Crime Alert Network, and within five minutes the state patrol officer responded with the information he had obtained. The vehicle's license plates identified the vehicle's owner as DeBlare. A "Leads-OnLine" inquiry was also made, which tracks stolen goods and cross-checks them against items purchased by pawn shops. Within three and one-half hours, a Peavey guitar was identified matching the description of the guitar stolen from the victim's residence. Scruton had pawned the guitar.

Officers went to the residence where DeBlare lived with his mother, but neither DeBlare nor the vehicle were there. When officers returned the next day, the GMC Envoy was parked out front and the officers impounded it. According to DeBlare's mother, Hannah Velasquez had driven the vehicle to her house. In her trial testimony, Velasquez claimed no memory of the burglary. In a tape-recorded conversation with police, however, she acknowledged she was the third person in the vehicle when DeBlare and Scruton went into the victim's residence, and she mentioned them bringing a television and guitar to the vehicle. Velasquez also stated they went back to DeBlare's house after the burglary, where they transferred some items to Velasquez's car. She admitted selling items taken from the victim's residence, including jewelry. She also

admitted there was stolen property at her apartment. Officers drove Velasquez to her apartment, where various items taken from the victim's residence were found.

DeBlare's residence was also searched with his mother's consent. An iPod belonging to the victim was found on the living room coffee table. Officers also found a brown "Carhartt-type" jacket. In the jacket pocket was a crumpled up prescription medication label with the victim's name.

A search of the GMC Envoy revealed a "hoody-type" stocking-cap that would partially cover a face, black gloves, metal tools, and a Pawn America slip with the name Hannah Velasquez for a silver necklace. Other items consistent with items stolen from the victim's residence were also found, including men's watches.

At trial, Velasquez and Scruton claimed a substantial memory loss due to heavy drug use. Scruton admitted running out of gas behind the State Patrol officer. He volunteered that DeBlare was on bond for drunk driving. He also conceded that, at least according to the police report, DeBlare asked him to do a burglary and he agreed. He agreed it was "possible" he and DeBlare did the burglary.

The circumstantial evidence alone was sufficient to convict DeBlare. There was no dispute DeBlare's vehicle was involved in the burglary. The make, model, and the vehicle's distinctive grill were identified by two eye-witnesses at the scene. Moreover, police found stolen items, and DeBlare was identified as the driver of the vehicle little more than an hour before the

burglary occurred. The circumstantial evidence, coupled with Velasquez's recorded statement placing DeBlare at the scene,[1] renders frivolous any argument concerning insufficient evidence.

There were no substantive motions before or during trial. Regardless, any possible argument regarding ineffective assistance of counsel for failing to file motions to suppress would lack any arguable merit. Police obtained a warrant to search the GMC Envoy, and more than ample probable cause supported the affidavit. Moreover, DeBlare's mother consented to the search of her residence. *See* ***State v. Sobczak***, 2013 WI 52, ¶1, 347 Wis. 2d 724, 833 N.W.2d 59. In addition, nothing in the record suggests DeBlare had standing to contest Velasquez's consent to search her apartment.

There is also no arguable merit to any argument regarding Scruton's comment on DeBlare's bond. In response to a question about whether he remembered running out of gas next to the officer on the highway, Scruton remembered the event but questioned whether it was him and DeBlare in the vehicle as neither had a valid driver's license. Scruton then volunteered that DeBlare was on bond for drunk driving. DeBlare's trial counsel did not want the remark stricken as it would only bring more attention to the comment. This constituted a strategic decision that DeBlare personally ratified during a sidebar.

At the time of the burglary, DeBlare was subject to bond in two pending Winnebago County cases. In order to minimize the prejudicial impact of informing the jury about the

[1] After Velasquez testified to a lack of memory on the day of the burglary, the jury heard her recorded statement to police, and they were also provided a transcript. The recorded statement constituted a prior inconsistent statement pursuant to WIS. STAT. §§ 908.01(4)(a) and 906.13.

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

bonds—and because there was no defense to the bail jumping charges if DeBlare was found guilty of burglary and theft—DeBlare stipulated that if he were found guilty by the jury of the burglary and theft charges, the circuit court could enter judgment on the bail jumping charges. In that way, no mention of bail bonds or prior convictions would be made. The bail jumping charges were based on two bonds and two separate crimes, and were therefore legally proper. *See* ***State v. Anderson***, 219 Wis. 2d 739, 757, 580 N.W.2d 329 (1998). DeBlare waived the right to have a jury adjudicate guilt on the bail jumping charges, and by doing so he gained the strategic advantage of preventing the jury from learning that he had criminal charges pending at the time of the burglary. In any event, there was no conceivable prejudice because the circuit court imposed only costs on each of the four convictions for bail jumping.

There is also no arguable merit to any challenge to the circuit court's sentencing discretion. After the jury returned a verdict finding DeBlare guilty of the two counts, and the court entered a judgment of conviction on all counts, the matter proceeded to sentencing after a two-hour break. DeBlare requested immediate sentencing. Because DeBlare was currently confined in prison in Winnebago County on another conviction, the recent Winnebago County PSI was used in the present case. DeBlare had no dispute with the accuracy of the Winnebago County PSI, he agreed he had sufficient time to review it and, in fact, he was familiar with it due to the recent sentencing.

The circuit court considered the proper factors, including DeBlare's character, the seriousness of the offenses and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court noted DeBlare's extensive criminal history, and the fact that in addition to his juvenile history, he had been "on a crime spree for most of [his] adult life." The court also noted DeBlare's consistent lack of remorse or sympathy and stated,

"[I]t's how you conducted yourself the whole trial." However, the court stated, "… [I]t took 12 people who have never met you less than a half hour to convict you. It's a pretty simple slam-dunk case …."

The circuit court also emphasized DeBlare's severe and long-standing drug and alcohol addiction. The court stated:

> And what I heard was that you and two other individuals who were strung out on drugs put on masks, went into a neighborhood, went into a home and ransacked it, and showed absolutely no respect or regard whatsoever for the owners of that home or the people who resided in that home, period. And where I come from, that's pretty serious.

The circuit court further emphasized the shattering effect of the crimes on the victim and the neighborhood. The court stated:

> If you listen to the 911 tape, that gentleman was frantic. There were two masked men in his neighborhood breaking into one of his neighbor's house, and you heard the excitement in, and the anxiety in that call and the things that he was saying and the fact that he was very energetic. And your crimes have had a lasting impact, and to be honest with you, I don't think you get it.

The circuit court imposed four years' initial confinement and four years' extended supervision on the burglary count; eighteen months' initial confinement and two years' extended supervision on the theft count, consecutively; and court costs on the four bail jumping counts. The sentence imposed was far less than the maximum allowable and thus presumptively neither harsh nor excessive. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶29-33, 255 Wis. 2d 632, 648 N.W.2d 507.

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 Steven Miller is relieved of further representing DeBlare in this matter.

Diane M. Fremgen
Clerk of Court of Appeals