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June 7, 2019

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

2018AP1613-CRNM State v. Dejon T. Williams (L.C. # 2016CF1008)

Before Lundsten, P.J., Blanchard and Kloppenburg, 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).

Attorney Mitchell Barrock, appointed counsel for Dejon Williams, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738 (1967). The no-merit report addresses (1) the

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

sufficiency of the evidence, and (2) whether police violated Williams's due process rights by failing to preserve as evidence the wig, purse, and shoes that Williams was wearing at the time of her arrest. Williams has filed a response addressing the preservation-of-evidence issue. Upon consideration of the report and the response, and an independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Williams was charged with one count of operating a motor vehicle without the owner's consent and two counts of fleeing or eluding an officer. At trial, Williams's defense was that the police misidentified her as the driver of the vehicle.

Williams did not dispute that the following sequence of events occurred: during night time hours, around 11:00 p.m., police noticed someone driving a vehicle they knew to be stolen; the vehicle's driver was the sole occupant of the vehicle; the vehicle fled from police in two successive high-speed chases; the vehicle came to a stop, and the driver exited the vehicle and ran away on foot into a nearby area with houses and yards where no one else was out and about; several officers pursued the driver on foot through the yards; the officers did not always have the driver in sight during the foot pursuit; and, within a few minutes, an officer found Williams under or near a porch less than a block from the stolen vehicle.

Although the officers' opportunities to view the driver before and during the foot pursuit were limited, three police officers testified that they easily recognized Williams as the driver. One of the officers, who had a direct view of the driver's face from a distance of about eight to ten feet while a spotlight was shining on the driver, testified that when he found Williams under the porch he recognized Williams "[r]ight away" as the driver and had "no doubt" that Williams was the driver. Another officer, who at one point during the foot pursuit came "face-to-face"

with the driver before the driver turned and ran again, testified that he doubted "[n]ot at all" that Williams was the driver.

Williams testified that she was not the driver. She claimed that, when the police apprehended her, she happened to be in the area looking for her boyfriend, and that she had squatted down by the porch to urinate.

The jury found Williams guilty. The circuit court sentenced Williams to a total of three years of initial confinement and four years of extended supervision, consecutive to a prior sentence.

The first issue the no-merit report addresses is sufficiency of the evidence. In Williams's response, she does not dispute the sufficiency of the evidence. Regardless, we agree with counsel that there is no arguable merit to this issue. "[A]n appellate court may not reverse a conviction unless the evidence, viewed most favorably to the state 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). Here, the police officers' testimony identifying Williams, additional officer testimony describing details of the two successive high-speed vehicle chases, and testimony by the stolen vehicle's owner, when taken together, easily provide sufficient evidence to support Williams's conviction on both the operating-without-consent charge and the two fleeing or eluding charges. *See* WIS. STAT. §§ 943.23(3) and 346.04(3) (2013-14) (defining the relevant crimes).

We turn to the second issue the no-merit report addresses, whether Williams's due process rights were violated because the police failed to preserve Williams's wig, purse, and

shoes as evidence. Williams's response addresses this issue. For the following reasons, we agree with counsel that the issue has no arguable merit.

A defendant's due process rights are violated if police either (1) fail to preserve exculpatory evidence, or (2) in bad faith fail to preserve "potentially useful" evidence. ***State v. Greenwold***, 189 Wis. 2d 59, 67-69, 525 N.W.2d 294 (Ct. App. 1994) (citing ***Arizona v. Youngblood***, 488 U.S. 51 (1988)). As to the first alternative, the exculpatory value of the evidence must be apparent at the time police fail to preserve it. ***Id.***; ***Youngblood***, 488 U.S. at 56. As to the second alternative, bad faith is not present unless the officers "acted with official animus or made a conscious effort to suppress" evidence. ***Greenwold***, 189 Wis. 2d at 69.

Before applying these two alternatives under ***Greenwold***, we set forth additional facts. It is undisputed that the police did not inventory Williams's wig, purse, and shoes when taking Williams into custody. As far as the record discloses, these items, as non-inventoried items, would have been transported with Williams to jail and remained her property. At trial, officers who identified Williams testified that Williams had a black wig or black hair, and one of the officers further testified that he recalled Williams having a red purse and shoes with heels. When Williams took the stand, she testified that she was wearing a blonde wig, an orange purse, and shoes without heels.

Applying the first ***Greenwold*** alternative, the issue is whether it would be frivolous to argue that police failed to preserve exculpatory evidence by failing to inventory Williams's wig, purse, and shoes when Williams was taken to jail. We agree with counsel that such an argument would be frivolous. As far as the record discloses, when police took Williams to jail, they had

no reason to think that Williams would dispute that her hair color, purse, and shoes matched those of the driver.

Applying the second ***Greenwold*** alternative, the issue is whether it would be frivolous to argue that police in bad faith failed to preserve "potentially useful" evidence. In her no-merit response, Williams asserts that the officers acted in bad faith. Assuming without deciding that Williams's wig, purse, and shoes were "potentially useful" evidence, we agree with counsel that there is no arguable merit to this issue. There is nothing in the record to support the view that the officers acted "with official animus or made a conscious effort to suppress" Williams's wig, purse, and shoes. *See* ***id.*** at 69.

The no-merit report fails to reflect that counsel considered other potential issues that arise in cases tried to a jury. Likewise, the no-merit report fails to reflect counsel's consideration of potential sentencing issues. Counsel is advised that a no-merit report should in some manner indicate counsel's consideration of such issues. Regardless, we consider such issues to demonstrate that the no merit-procedure was followed. *See* ***State v. Allen***, 2010 WI 89, ¶82, 328 Wis. 2d 1, 786 N.W.2d 124 (it is difficult to know the nature and extent of the court of appeals' examination of the record if the court does not enumerate possible issues that it reviewed and rejected in its no-merit opinion).

Our review of the record discloses no other issues of arguable merit with respect to events prior to sentencing. The circuit court made proper rulings on motions in limine. We see no basis to challenge jury selection. Objections throughout trial were properly ruled upon, and no potentially objectionable testimony was admitted. The circuit court conducted a proper

colloquy with Williams about her right to testify. The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury.

Similarly, our review of the record shows no issues of arguable merit with respect to sentencing. Williams's sentence was within the maximum allowed, the circuit court discussed the required sentencing factors along with other relevant factors, and the court did not consider any inappropriate factors. *See* ***State v. Gallion***, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197.

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

Therefore,

IT IS ORDERED that the judgment of conviction and the order denying postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Mitchell Barrock is relieved of any further representation of Dejon Williams in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals