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DISTRICT II

January 29, 2020

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

2019AP1629-CRNM State of Wisconsin v. James D. Reagles (L.C. #2016CF1122)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

James D. Reagles appeals from a judgment convicting him of uttering a forgery as party to a crime (PTAC) and conspiracy to commit forgery. Both were charged as a repeater. Reagles' appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE

809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Reagles was informed of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Using a legitimate Wisconsin supplemental security income check issued to another person, Reagles and his girlfriend copied the check multiple times, altering the amount and the payor and payee names. They successfully cashed the bogus checks at various Kenosha businesses. A local merchant grew suspicious and called police. Police seized from the couple's apartment numerous checks, some identical, some with different remitters, banks, and payees; a printer/scanner/copier; a large stack of the same type check paper; a box of Office Depot business check refills; and check-writing software, software paperwork, and manuals.

Reagles was charged with, count 1, PTAC uttering a forgery and, count 2, conspiracy to commit forgery. Both were charged as a repeater. After a four-day trial, the jury found him guilty on both counts. On count 1, the court sentenced him to eighteen months' initial confinement plus three years' extended supervision, consecutive to a previously imposed sentence. On count 2, the court ordered three years' probation, with a withheld sentence, consecutive to count 1 and to the previously imposed sentence. This no-merit appeal followed.

The no-merit report examines two issues: whether sufficient evidence supports the jury's verdicts and whether the sentence was excessive or otherwise reflects an erroneous exercise of

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

discretion. We agree with appellate counsel's legal analysis and his conclusion that neither issue has arguable merit. We need address them no further.

Appellate counsel failed to indicate whether he considered the denial of Reagles' repeated motions for a mistrial. If he did, he should have included the potential issue in his no-merit report. On the morning of the third day of trial, a detective who was to testify that day advised that he recognized one of the jurors. He described the juror as a relative of a colleague of his wife, and said he might see her at a function with his wife and her colleague or at their six- or seven-hundred member church, but that he never has had a conversation with her beyond "Hi, how are you?" The juror had not indicated any recogntion when the names of potential witnesses were recited during voir dire.

Reagles' counsel moved for a mistrial, arguing that the juror already had "heard all the facts" and "heard all the evidence," and had "been back in the jury deliberation room" and "interacted with the other jurors." The court denied Reagles' motion at that time. It explained:

> The reason I'm delaying is because we have got 13 jurors, and if we get to the close and I have still got 13 jurors, then I may be more willing to release that juror. On the other hand, if I release the juror now and then come up short in the morning, then I have got a problem. It's not a clear[-]cut case where it definitely would be excused. For one thing, I don't know exactly what they were asked [during voir dire]. I think they were asked about knowing or being related to any police officers or something to that effect.

Defense counsel contended that if this information had been known at voir dire he would have moved to strike her for cause. The court stated that it would have denied the motion because there was "not enough reason to disqualify the juror for cause." It then asked, "If I excuse her [tomorrow], assuming there are 13 here tomorrow, then where is the harm?"

Reagles' counsel responded that, while he recognizes jurors are instructed not to discuss the case before deliberations, "we don't know what goes on in the jury room."

The next day, Reagles renewed his motion for a mistrial because the juror "does know one of the witnesses." The court instead opted to strike her from the panel before deliberations began, and reiterated that it likely would not have struck her for cause during voir dire.[2]

A mistrial motion is addressed to the trial court's discretion. ***State v. Pankow***, 144 Wis. 2d 23, 47, 422 N.W.2d 913 (Ct. App. 1988). The court must determine in light of the entire proceeding whether the claimed error is sufficiently prejudicial to require a new trial. ***Id.*** Not all errors warrant a mistrial, and it is preferable to employ less drastic alternatives to address the claimed error. ***State v. Adams***, 221 Wis. 2d 1, 17, 584 N.W.2d 695 (Ct. App. 1998). "A mistrial is appropriate only when a 'manifest necessity' exists for the termination of the trial." ***Id.***

Reagles suggested that the juror might have impermissibly discussed evidence or shared an impression of the detective with jurors. This issue is nonmeritorious. First, at the outset of voir dire and at numerous other points during the trial, the court instructed the jurors to refrain from discussing the case among themselves before deliberation. Then, once dismissed, the juror was allowed to return to the jury room to gather her belongings and again was admonished to

[2] At that point, the court stated that he also was acquainted with the juror, as he is "a close friend of her father," but "[did not] know how that would affect anything." We presume a judge has acted fairly, impartially, and without bias. ***State v. Gudgeon***, 2006 WI App 143, ¶20, 295 Wis. 2d 189, 720 N.W.2d 114. Reagles did not attempt to rebut that presumption by objecting to the judge's acquaintance with the juror through his friendship with her father, and the court exhibited no evidence of bias throughout the trial. *See* ***id.***, ¶¶20-21.

have no conversation with the other jurors. The jury is presumed to follow the instructions given it. ***State v. Leach***, 124 Wis. 2d 648, 673, 370 N.W.2d 240 (1985).

Second, the trial court reasonably employed the far less drastic alternative of striking the juror before deliberations. Third, a court will declare a mistrial for jury irregularities only if they had a major prejudicial impact on the verdict. *See* ***State v. Shillcutt***, 119 Wis. 2d 788, 793, 350 N.W.2d 686 (1984). Reagles alleges none, and we see no signs of any in the record. We are confident that the denial of the mistrial motion presents no issue of arguable merit.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Reagles 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 Mark S. Rosen is relieved from further representing Reagles in this appeal. *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