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**DISTRICT I**

June 16, 2020

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

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2016AP1747-CRNM      State of Wisconsin v. Jorell Martrell Lockett  
(L.C. # 2014CF5187)

Before Brash, P.J, Dugan and Donald, 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).**

Jorell Martrell Lockett appeals from a judgment of conviction for first-degree reckless homicide with use of a dangerous weapon and for possession of a firearm by a felon. *See* WIS.

STAT. §§ 940.02(1), 939.63(1)(b), 941.29(2) (2013-14).<sup>1</sup> Lockett’s appellate counsel, Patrick Flanagan, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Lockett received a copy of the report and filed a response.<sup>2</sup> Following our initial review of the case, we directed appellate counsel to file a supplemental no-merit report. Upon consideration of appellate counsel’s no-merit and supplemental no-merit reports, Lockett’s response, and an independent review of the record as mandated by *Anders*, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The charges in this matter stem from an incident that occurred on December 13, 2014. According to the complaint, the police were dispatched to an alley following a report that a suspicious vehicle was located there. Upon locating the vehicle, a police officer looked inside and saw what appeared to be blood. The officer noticed that the passenger side seat was reclined and was covered with an unzipped sleeping bag type blanket. Believing that there was a person inside who needed medical attention, the police officer broke into the vehicle, pulled back the blanket, and observed the victim in this matter.

The complaint further alleged that the victim suffered a gunshot wound to the left side of her neck and torso and that the manner of death was a homicide. Fingerprints found in the vehicle where the victim was located connected Lockett to the crime. When he was arrested, Lockett made incriminating statements to the police officers.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

<sup>2</sup> One the same day he filed his twenty-eight page response, Lockett also filed a separate document captioned “Concerns.” We refer to these documents collectively as Lockett’s response.

Luckett went to trial, and a jury found him guilty of both charges filed against him. On the homicide charge, the circuit court sentenced Luckett to thirty years of initial confinement and fifteen years of extended supervision. On the felon in possession of a firearm charge, the circuit court ordered Luckett to serve a consecutive sentence of five years of initial confinement and five years of extended supervision.

This appeal follows. The no-merit report addresses whether there was sufficient credible evidence to support the guilty verdicts, whether Luckett's sentence was unduly harsh, and whether Luckett generally received the effective assistance of trial counsel. The supplemental no-merit report analyzes whether the circuit court erred by denying trial counsel's request for an adjournment, whether trial counsel provided ineffective assistance by failing to retain experts to review the DNA and ballistics testing that was done, whether trial counsel provided ineffective assistance by failing to request a *Miranda-Goodchild* hearing,<sup>3</sup> and whether the prosecutor committed a discovery violation. This court is satisfied that the no-merit and supplemental no-merit reports properly analyze the issues they raise as being without merit and that no procedural trial errors occurred.<sup>4</sup> We discuss these potential issues further only insofar as they relate to arguments raised by Luckett in his response.

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<sup>3</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966); *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

<sup>4</sup> This court placed this appeal on hold because the Wisconsin Supreme Court granted a petition for review in *State v. Trammell*, 2017AP1206-CR, unpublished slip op. (WI App May 8, 2018). At issue in *Trammell* was the continued viability of jury instruction WIS JI—CRIMINAL 140, an instruction that was given in Luckett's case. The supreme court has since issued a decision in *Trammell*, holding "that WIS JI—CRIMINAL 140 does not unconstitutionally reduce the State's burden of proof below the reasonable doubt standard." See *State v. Trammell*, 2019 WI 59, ¶67, 387 Wis. 2d 156, 928 N.W.2d 564. Consequently, there would be no arguable merit to pursue postconviction proceedings based on the use of jury instruction WIS JI—CRIMINAL 140 at Luckett's trial

In his response, Lockett raises a number of claims connected to the overarching issues of the sufficiency of the evidence and whether his trial counsel was ineffective. For instance, Lockett argues that trial counsel should have pursued a *Miranda-Goodchild* hearing to challenge the voluntariness of statements he made to Officer Gregory Marr.<sup>5</sup>

Officer Marr testified at trial that he was present when Lockett was arrested. Lockett was smoking a cigarette and when Officer Marr removed it from his mouth, Lockett asked if he could have it back because it was the last cigarette he was going to have for a long time. Officer Marr testified that he returned the cigarette to Lockett. At the time, Lockett was holding a white envelope containing a paycheck, which Officer Marr placed in his own pocket as he walked Lockett to the squad car. Officer Marr testified that Lockett asked if they could stop so that he could cash the check on the way to the jail. Officer Marr told him that they could not do so but that the paycheck would be placed in inventory and he could retrieve it when he got out of jail. According to Officer Marr, Lockett responded: “Man, let’s be real. I ain’t never getting out of jail. I shot that girl. You all got the murder weapon.” Officer Marr further testified that Lockett told him that he did not intentionally shoot the victim. When asked what happened next, Officer Marr testified that he let Lockett—who was sitting in the back seat of the squad car with his feet on the ground—finish his cigarette, he then closed the door, and recorded what Lockett said in his memo book. During his testimony, Lockett denied making any statements to Officer Marr.

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<sup>5</sup> The supplemental no-merit report addresses *Miranda-Goodchild* in the context of the statement Lockett made during his custodial interview. However, the issue, as framed by Lockett in his response, centers on the statements he made to Officer Marr.

There are problems with Lockett's argument that trial counsel should have pursued a *Miranda-Goodchild* hearing. First, Lockett denies making *any* statement to Officer Marr. If a defendant moves to suppress his or her statements because of law enforcement's failure to timely warn of the risks and consequences of self-incrimination (*Miranda*), or the voluntariness of the statements (*Goodchild*), the trial court conducts a *Miranda-Goodchild* hearing to determine the validity of the accused's statements and whether suppression is warranted. Given Lockett's wholesale denial that he made any statement whatsoever to Officer Marr, there would be no basis for counsel to pursue a *Miranda-Goodchild* hearing.<sup>6</sup>

Instead, the differing trial testimony amounted to a credibility issue, and the jury's decision to believe Officer Marr instead of Lockett is not subject to review. *See State v. Serebin*, 119 Wis. 2d 837, 842, 350 N.W.2d 65 (1984). The jury alone resolves conflicts in the testimony, weighs the evidence, and draws reasonable inferences from basic facts to ultimate facts. *State v. Poellinger*, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990).

We further address, in passing, Lockett's request for newly appointed appellate counsel because Attorney Flanagan is ineffective "by failing to find merit[orious] issues and to present those claims here." The complaints about appellate counsel's decision to file a no-merit report are rejected. The filing of a no-merit report is not, in and of itself, ineffective assistance of appellate counsel. Moreover, our review of the record discloses no other potential issues for appeal. This court has reviewed and considered the various issues raised by Lockett. To the extent we did not specifically address those issues, this court has concluded that they lack

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<sup>6</sup> When questioned as to whether he spoke with Officer Marr, Lockett testified: "I didn't say anything to Officer Marr."

sufficient merit or importance to warrant individual attention. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Lockett further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Patrick Flanagan is relieved from further representing Jorell Martrell Lockett in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*