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**DISTRICT III**

March 8, 2022

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Steven G. Knickerbocker 531964  
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Redgranite, WI 54970-0925

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

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2019AP2301-CRNM      State of Wisconsin v. Steven G. Knickerbocker  
(L. C. No. 2017CF399)

Before Stark, P.J., Hruz and Gill, 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).**

Steven Knickerbocker appeals a judgment, entered following a jury trial, that convicted him of two counts of felony bail jumping, three counts of misdemeanor bail jumping, and two counts of retail theft of merchandise with a value not exceeding \$500. Attorney Leonard Kachinsky has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20).<sup>1</sup> Knickerbocker was advised of his right to respond to the no-merit

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

report and has filed multiple responses. Counsel has filed a supplemental no-merit report addressing Knickerbocker's claims. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

The charges against Knickerbocker arose after an off-duty police officer observed him walking through a Home Depot store parking lot in Grand Chute on September 18, 2016, with a yellow DeWalt drill box partially concealed beneath his shirt. Knickerbocker then left the parking lot in a vehicle driven by another individual. The off-duty officer followed the vehicle and also contacted dispatch, providing the vehicle's description and license plate number. Shortly thereafter, two officers from the Grand Chute Police Department stopped the vehicle on Interstate 41 near Gillett Street. From outside the vehicle, the officers observed a yellow DeWalt drill box in plain view between Knickerbocker's legs on the vehicle's front passenger-side floorboard.

The officers subsequently located five video games and three plastic video game security cases on the vehicle's front passenger-side floorboard and in a bag on the front passenger-side floorboard. One of the security cases had a "Geek Squad" sticker on it, which led the officers to believe it was from a Best Buy store. The driver of the vehicle told one of the officers that she had driven Knickerbocker to a Best Buy store earlier that day.

During a search of Knickerbocker's person, the officers located three folded pieces of tin foil in one of Knickerbocker's pants pockets. The officers knew, based on their training and

experience, that tin foil is commonly used in retail thefts because it can prevent security alarms from going off when an individual exits a store with stolen merchandise.

The officers subsequently obtained three images that were taken from security camera footage from the Grand Chute Home Depot store on the day in question. In the photographs, a man wearing the same type of clothing that Knickerbocker was wearing during the traffic stop can be seen entering the store pushing a shopping cart, exiting the store without a cart, and walking through the parking lot. A loss prevention manager from Home Depot confirmed that the drill found in Knickerbocker's possession was from the Grand Chute store. Home Depot personnel also confirmed that the drill had not been sold on the day it was found in Knickerbocker's possession.

The officers also obtained security camera video from the Best Buy store in Grand Chute. The video footage showed a man with the same build and clothing as Knickerbocker in the video game area of the store, where he appeared to take several video games and place them underneath his shirt. The man then walked into the restroom area at the front of the store and remained inside for several minutes. He subsequently walked out of the store without stopping at the registers to pay for anything. Best Buy personnel confirmed that the Grand Chute store was missing the same number of video games that were found in the vehicle with Knickerbocker on the day in question.

Knickerbocker was released on bond in three Brown County cases on the date when he allegedly committed the thefts at issue in this case. He had been charged with a felony in one of the Brown County cases and with misdemeanors in the other two cases. In each of the

Brown County cases, Knickerbocker's bond conditions required that he not commit any new crimes.

Based on the events that occurred on September 18, 2016, Knickerbocker was charged in the instant case with two counts of felony bail jumping, three counts of misdemeanor bail jumping, and two counts of retail theft of merchandise with a value not exceeding \$500. Following a trial in October 2019, a jury found Knickerbocker guilty of each of those counts. The circuit court subsequently imposed sentences totaling 100 days in jail, consecutive to any other sentences Knickerbocker was then serving.

The no-merit report addresses whether: (1) the circuit court properly denied Knickerbocker's motions to dismiss his second appointed attorney; (2) the court subsequently erred by permitting Knickerbocker to represent himself at trial, with the aid of stand-by counsel; (3) the court properly determined that Knickerbocker was competent to proceed; (4) the court's evidentiary rulings were erroneous; (5) the evidence was sufficient to support the jury's verdicts; (6) the court properly exercised its sentencing discretion; and (7) the court erred by failing to grant Knickerbocker sentence credit. We agree with counsel's description, analysis, and conclusion that any challenge to Knickerbocker's convictions or sentences on these grounds would lack arguable merit, and we do not discuss them further.

The no-merit report also addresses whether the circuit court properly denied Knickerbocker's pretrial and posttrial motions to dismiss the charges against him and the related issue of whether the officers lawfully stopped the vehicle in which Knickerbocker was a

passenger.<sup>2</sup> Knickerbocker's motions to dismiss alleged, generally, that the criminal complaint contained false statements, that the officers illegally stopped the vehicle outside of Grand Chute, and that there was no video evidence directly showing that Knickerbocker had committed a crime. Knickerbocker appears to renew these claims in his responses to the no-merit report.<sup>3</sup>

There would be no arguable merit to a claim that Knickerbocker is entitled to relief because the criminal complaint contained false statements. Knickerbocker notes that the original complaint incorrectly stated that the officers who stopped his vehicle were from the Appleton Police Department, rather than the Grand Chute Police Department. However, before trial, the State amended the complaint to correctly state that the officers were from the Grand Chute Police Department. Although Knickerbocker claimed in his motions to dismiss that the prosecutor "knowingly and willfully use[d] false statements [in the criminal complaint], to cover up, [and] conceal a violation of the unreasonable search and seizure clause of the [F]ourth [A]mendment," there is nothing in the appellate record to support this assertion or to suggest that a claim in this regard would have arguable merit.

Knickerbocker's claim that the officers unlawfully stopped the vehicle in which he was a passenger also lacks arguable merit. Knickerbocker contends that the stop occurred in Appleton and was therefore outside the officers' jurisdiction. The officers testified, however, that the stop

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<sup>2</sup> Knickerbocker filed the same motion to dismiss both before and after trial, albeit with different documents attached. Although Knickerbocker never filed a motion to suppress evidence, his motions to dismiss argued, among other things, that the traffic stop was unlawful.

<sup>3</sup> It is difficult to discern the specific claims that Knickerbocker intends to raise in his responses to the no-merit report. We have done our best to identify and address Knickerbocker's arguments. To the extent we do not specifically address any arguments that Knickerbocker intended to raise, we conclude those arguments are insufficiently developed to warrant individual attention.

occurred on Interstate 41 near Gillett Street. Appellate counsel has referred this court to an official map of the Town of Grand Chute, which shows that the area where Interstate 41 crosses Gillett Street is located in Grand Chute. Under these circumstances, there would be no arguable merit to a claim that the stop occurred outside the officers' jurisdiction.

Knickerbocker's assertion that the charges should have been dismissed because there was no video evidence that directly showed him committing a crime also lacks arguable merit. "A conviction may be supported solely by circumstantial evidence, and in some cases, circumstantial evidence may be stronger and more satisfactory than direct evidence." *State v. Mertes*, 2008 WI App 179, ¶11, 315 Wis. 2d 756, 762 N.W.2d 813. Here, there was ample circumstantial evidence to support Knickerbocker's convictions on each of the seven charges.

Knickerbocker also asserts that the officers illegally searched the vehicle in which he was a passenger. He contends that the officers asked for his consent to search the vehicle, and he told them he was unable to give consent because he was not the vehicle's owner. He appears to contend that, without the consent of the vehicle's owner, the officers could not legally search the vehicle without a warrant.

This claim lacks arguable merit. First, the officers' body camera videos of the stop do not support Knickerbocker's assertion that the officers asked for his consent to search the

vehicle.<sup>4</sup> In addition, both officers testified that they did not search the vehicle at any point. Instead, the officers testified that when they approached the vehicle, the drill box was in plain view between Knickerbocker's legs on the front passenger-side floorboard. See *Bies v. State*, 76 Wis. 2d 457, 463-64, 251 N.W.2d 461 (1977) (explaining that evidence may be seized without a search warrant under the "plain view" exception to the warrant requirement). The record further shows that after the officers removed Knickerbocker from the vehicle and detained him, they asked Knickerbocker whether he wanted his property to come with him or to stay with the vehicle's driver. Knickerbocker responded that he wanted his property to come with him, so one of the officers returned to the vehicle and asked the driver to identify which items in the vehicle belonged to Knickerbocker. The driver identified the video games and plastic security cases as being Knickerbocker's property, so the officer removed them from the vehicle, consistent with Knickerbocker's directive. On this record, there would be no arguable merit to a claim that the officers illegally searched the vehicle.

Knickerbocker's responses to the no-merit report also contain various assertions of unlawful conduct by the prosecutor, the two defense attorneys who were initially appointed to represent Knickerbocker in the circuit court, and the circuit court judge. There is nothing in the record to suggest that any of these unsupported and speculative claims have arguable merit. Knickerbocker also raises numerous claims of misconduct by various officials in other cases that

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<sup>4</sup> To the extent Knickerbocker claims the body camera videos were altered, either by the State or by his own defense attorneys, there is nothing in the appellate record to support this claim. One of the officers testified at trial that a body camera is not necessarily left on during all portions of a traffic stop. The officer explained, "Sometimes we shut it off if we don't have anything of evidentiary value that we believe we're going to discover with the camera, or if we need to discuss things with our partners." The officer further testified that to the extent he turned his body camera off during the stop at issue in this case, it was "[b]ecause I didn't think that I was going to capture anything of evidentiary value at that point in time and ... I didn't think I was going to gain anything by keeping it on."

were filed against him in Brown County. Again, there is nothing in the record to support these claims. Moreover, we agree with appellate counsel that “any misconduct in [the Brown County] cases would affect those cases, not this one.”

Knickerbocker also asserts that the first attorney who was appointed to represent him during the circuit court proceedings, Attorney Steven Johnson, had a conflict of interest because he is the brother of Attorney Dana Johnson, a deputy district attorney in Brown County who prosecuted several Brown County cases against Knickerbocker. We are unable to determine, based on the appellate record, whether Steven and Dana Johnson are, in fact, related. In an affidavit submitted during the circuit court proceedings, Knickerbocker averred that he “was told by an inmate” that Steven and Dana Johnson “are blood related to each other.” However, appellate counsel states in the supplemental no-merit report that counsel is “not sure” whether Steven and Dana Johnson are related.

Even assuming that a familial relationship exists between Steven and Dana Johnson, there would be no arguable merit to a claim that Knickerbocker is entitled to relief on that basis. “[I]n a postconviction setting, the defendant must show by clear and convincing evidence that [his or her trial] attorney had an actual conflict of interest.” *State v. Kalk*, 2000 WI App 62, ¶16, 234 Wis. 2d 98, 608 N.W.2d 428. “An actual conflict of interest exists when the attorney is actively representing a conflicting interest.” *Id.* Stated differently, a defendant must establish that his or her attorney “had a competing loyalty that adversely affected [the defendant’s] interests.” *Id.*

In this case, even if Dana and Steven Johnson are related, there is nothing to suggest that Dana Johnson influenced Steven Johnson’s representation of Knickerbocker in any way.



Moreover, Steven Johnson withdrew from representing Knickerbocker on January 2, 2018—over eleven months before Knickerbocker’s trial. Attorney Heather Kavanaugh was then appointed to represent Knickerbocker, and she ultimately served as stand-by counsel after Knickerbocker decided to represent himself at trial. Under these circumstances, Knickerbocker would be unable to show, by clear and convincing evidence, that Steven Johnson had a competing loyalty that adversely affected Knickerbocker’s interests. *See id.*

Finally, Knickerbocker appears to suggest that any attorney appointed to represent an indigent defendant by the Office of the State Public Defender has a conflict of interest because that attorney is either employed or paid by the State. Again, we conclude this claim lacks arguable merit. There is nothing in the record to suggest that the quality of the representation provided to Knickerbocker by either Attorney Steven Johnson or Attorney Kavanaugh was in any way affected by the fact that those attorneys were compensated by the Office of the State Public Defender. Moreover, appellate counsel asserts that “[w]hile the State Public Defender provides compensation for attorneys it appoints to represent individuals, there are no significant restrictions on that attorney in his/her exercise of professional judgment in representing individuals.” In addition, we have located no legal authority supporting Knickerbocker’s assertion that a conflict of interest exists based solely on the fact that a defense attorney is employed or paid by the Office of the State Public Defender.

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 Leonard Kachinsky is relieved of further representing Steven Knickerbocker 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*