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**DISTRICT I**

September 20, 2022

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Deshaun K. Scott 671095  
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P.O. Box 351  
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You are hereby notified that the Court has entered the following opinion and order:

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2020AP1185-CRNM      State of Wisconsin v. Deshaun K. Scott (L.C. # 2017CF1417)

Before Brash, C.J., Dugan and White, 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).**

Deshaun K. Scott appeals from a judgment of conviction, following a jury trial, of one count of felony murder, one count of fleeing or eluding an officer, and one count of possession of a firearm by a person adjudicated delinquent. His appellate counsel, Steven Zaleski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Scott received a copy of the report and was advised of his right to respond, but

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

has not done so. We have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

The State charged Scott with first-degree reckless homicide with use of a dangerous weapon, attempted armed robbery, armed robbery as a party to a crime, fleeing, and possession of a firearm after having been adjudicated delinquent. The charges stemmed from an armed robbery and an attempted armed robbery, both of which took place on March 22, 2017. The attempted armed robbery resulted in the shooting death of G.G.Z.<sup>2</sup>

The matter proceeded to a six-day jury trial, where the jury found Scott guilty of felony murder (as a lesser included offense to first-degree reckless homicide), felon in possession after having been adjudicated delinquent, and fleeing. The jury found Scott not guilty of armed robbery. The trial court sentenced Scott to twenty-five years of initial confinement and ten years of extended supervision on the felony murder count, three years of initial confinement and three years of extended supervision on the fleeing charge, and five years of initial confinement and five years of extended supervision on the possession of a firearm after being adjudicated delinquent charge. The trial court ordered that the sentences on the felony murder and possession of a firearm offenses run consecutively. The trial court also ordered restitution in the amount of \$36,026.99.

Counsel's lengthy no-merit report addresses a number of issues, which this court has condensed as follows: (1) whether the trial court erred in denying Scott's pretrial motion to

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<sup>2</sup> Because counsel identifies the victim using his initials, we do the same.

suppress statements made to law enforcement following his arrest; (2) whether the trial court erred in denying Scott's motion to prohibit the State's use of certain photos; (3) whether any errors occurred during the trial proceedings, including but not limited to, voir dire, opening and closing statements, and instructing the jury; (4) whether there is arguable merit to a challenge of any evidentiary issues, including, but not limited to, the sufficiency of evidence and the propriety of excluded or admitted evidence; (5) whether potential confrontation clause violations lack arguable merit; (6) whether trial counsel provided effective assistance; and (7) whether the trial court properly exercised its sentencing discretion in various respects.

Counsel first addresses whether there would be arguable merit to a challenge to the trial court's ruling on Scott's motion to suppress evidence. Prior to trial, Scott filed a motion to suppress statements on the basis that any statements he made to law enforcement during two interviews, on March 22nd and 23rd of 2017, respectively, were not knowingly and voluntarily made. Scott's motion stated that he was only seventeen years old, and that prior to the interviews he smoked marijuana, sustained injuries in a car accident, and was given medication at a hospital for those injuries.

When this court reviews a trial court's ruling on a motion to suppress, we uphold that court's factual findings unless they are clearly erroneous. *See State v. Patton*, 2006 WI App 235, ¶7, 297 Wis. 2d 415, 724 N.W.2d 347. We review the application of constitutional principles to those findings *de novo*. *See State v. Casarez*, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385. When determining whether a confession or admission is voluntary, we look to the totality of circumstances. *State v. Schneidewind*, 47 Wis. 2d 110, 117, 176 N.W.2d 303 (1970). In order to find a defendant's statement involuntary, "there must be some affirmative evidence of improper police practices deliberately used to procure a confession." *State v. Clappes*, 136

Wis. 2d 222, 239, 401 N.W.2d 759 (1987). In assessing the totality of circumstances, we must balance the personal characteristics of the defendant against any pressures imposed by the police. See *id.* at 236. The relevant personal characteristics of the defendant include that person’s age, education and intelligence, physical and emotional condition, and prior experience with the police. *Id.*

However, “[b]efore we balance personal characteristics against police pressures, we must first examine the threshold matter of coercion.” *State v. Vice*, 2021 WI 63, ¶31, 397 Wis. 2d 682, 961 N.W.2d 1. “Coercive or improper police conduct is a necessary prerequisite for a finding of involuntariness.” *State v. Hoppe*, 2003 WI 43, ¶37, 261 Wis. 2d 294, 661 N.W.2d 407. If there is no police coercion or improper police pressure, “there is no need for us to engage in the balancing test between the suspect’s personal characteristics and those nonexistent pressures.” *Vice*, 397 Wis. 2d 682, ¶31. Thus, “[t]he pertinent inquiry is whether the statements were coerced or the product of improper pressures exercised by the person or persons conducting the interrogation.” *Hoppe*, 261 Wis. 2d 294, ¶37. Establishing coercion is “a high bar for a defendant to surmount.” *Vice*, 397 Wis. 2d 682, ¶32.

At the evidentiary hearing, the trial court heard testimony from the law enforcement officers and viewed recordings of the interviews. In denying the motion, the trial court acknowledged Scott’s age, but found that neither the marijuana nor the over-the-counter pain medication Scott had taken impaired his ability to make knowing and voluntary statements to law enforcement. The trial court also found that law enforcement did not engage in coercion to obtain Scott’s statements. The trial court recited detailed findings of fact prior to ultimately denying Scott’s motion. Based upon our independent review of the record before us, we

conclude that there is no arguable merit to a claim that the trial court erred in denying Scott's motion to suppress.

Counsel next addresses the trial court's denial of Scott's motion to exclude the use of certain photographs showing G.G.Z.'s injuries. The decision to admit or exclude evidence is a matter for trial court discretion. *See State v. Jackson*, 2014 WI 4, ¶45, 352 Wis. 2d 249, 841 N.W.2d 791. The trial court's evidentiary ruling will be upheld "if it 'examined the relevant facts, applied a proper standard of law, used a demonstrated rational process and reached a conclusion that a reasonable judge could reach.'" *See State v. Dorsey*, 2018 WI 10, ¶37, 379 Wis. 2d 386, 906 N.W.2d 158 (citation omitted). The trial court conducted a thoughtful analysis in denying Scott's motion and put limitations on the State's use of additional pictures that the court stated would be prejudicial to Scott's defense. We discern no arguably meritorious claim that the trial court erroneously exercised its discretion.

Turning to counsel's analysis of the trial proceedings, we have independently reviewed the record and conclude that there would be no arguable merit to a claim that any errors during voir dire, opening and closing statements, and the giving of jury instructions, provide grounds for appeal.

Turning to the evidentiary issues, we agree with counsel's description, analysis, and conclusion that any challenges to the sufficiency of the evidence and the admission or exclusion of evidence would lack arguable merit.

When this court considers the sufficiency of evidence presented at trial, we apply a highly deferential standard. *See State v. Kimbrough*, 2001 WI App 138, ¶12, 246 Wis. 2d 648, 630 N.W.2d 752. We "may not reverse a conviction unless the evidence, viewed most favorably

to the [S]tate and the conviction, is so insufficient in probative value and force that ... no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” See *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The finder of fact, not this court, considers the weight of the evidence and the credibility of the witnesses and resolves any conflicts in the testimony. See *id.* at 503-04.

Over the course of six days, the jury had an opportunity to evaluate the testimony of numerous witnesses, including law enforcement and one of Scott’s co-actors. The jury also viewed multiple exhibits and heard Scott’s own incriminating statements. Upon an independent review of the record, we agree with counsel that the evidence supports Scott’s convictions for felony murder, fleeing, and possessing a firearm as a person previously adjudicated delinquent.

As to the admission and exclusion of evidence, we previously stated that the decision to admit or exclude evidence is a matter for trial court discretion. See *Jackson*, 352 Wis. 2d 249, ¶45. Here, the trial court provided a thorough explanation for its admission and exclusion decisions. We can discern no meritorious claims that the trial court erroneously exercised its discretion in this regard.

Next, counsel addresses whether a meritorious argument could be made that the admission of certain evidence violated Scott’s right to confrontation. The State introduced testimony from Benjamin Hurley, a latent print examiner with the Milwaukee Police Department. Hurley testified about lifting latent print samples from the car allegedly used at the time of the shooting. Hurley then testified about the results of an examination of such prints by another latent print examiner, Matthew Maudlin.

The Confrontation Clause provides that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” U.S. CONST. amend. VI. It is satisfied when a hearsay declarant “appears for cross-examination at trial.” *Crawford v. Washington*, 541 U.S. 36, 59 n.9 (2004). However, if a hearsay declarant is not present at trial, and if the hearsay statement is “testimonial,” the Confrontation Clause is satisfied only if the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. *See id.* at 58; *State v. Griep*, 2015 WI 40, ¶24, 361 Wis. 2d 657, 863 N.W.2d 567.

We agree with counsel’s determination that the violation, if any, was harmless and possibly even helpful to Scott as Maudlin’s report identified fingerprints from both of Scott’s co-actors and an unidentified person. We discern no meritorious arguments as to this issue.

Counsel also addresses whether a confrontation clause violation occurred when Detective Michael Saranec testified that Eric Smiley, one of Scott’s co-actors, told law enforcement that Scott was the shooter. Smiley did not testify at trial. Counsel explains that while a confrontation clause violation may have occurred, defense counsel’s failure to object requires that this court analyze the possible violation under the plain error doctrine and subsequently, under the harmless error doctrine. Upon our review of the record, we agree with counsel that Saranec’s testimony regarding Smiley’s statements were merely cumulative and corroborative. The testimony does nothing to undermine the abundance of other evidence underlying Scott’s trial. We therefore agree with counsel’s analysis of the appropriate law and agree that a challenge to Saranec’s testimony would lack arguable merit.

Trial counsel’s failure to object to Saranec’s testimony leads us to another issue raised in counsel’s no-merit report—that of ineffective assistance of counsel. A defendant claiming

ineffective assistance of counsel is required to show both that counsel's performance was deficient and that the deficiency prejudiced the defendant. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate deficient performance, the defendant must show that trial counsel's actions or omissions "fell below an objective standard of reasonableness." *See id.* at 688. To demonstrate prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. If the defendant fails to satisfy one prong of the analysis, a reviewing court need not address the other. *See id.* at 697.

Throughout the no-merit report, counsel addresses potential deficiencies and explains why each potential deficiency fails to demonstrate prejudice. We agree with counsel's thorough analysis and conclude, upon our own independent review of the record, that none of the alleged deficiencies give rise to prejudice. Accordingly, there would be no arguable merit to a challenge of trial counsel's representation.

The final issue appellate counsel addresses in the no-merit report is whether the trial court erroneously exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Our review of the record confirms that the trial court appropriately considered the relevant sentencing objectives and factors. Scott's sentence was within the range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Indeed, the trial court was thorough and thoughtful in its analysis of the relevant objectives and factors, discussing in particular detail the impact of Scott's actions on G.G.Z.'s family and friends and the need to protect the community. Thus, this court is satisfied



that the no-merit report properly analyzes this issue as lacking arguable merit. This court also agrees with counsel's analysis as to restitution, whether the trial court properly applied sentencing credits to Scott's sentence, and whether the trial court properly imposed a DNA surcharge.

To the extent that we may not have addressed some aspects of the issues raised in counsel's no-merit report, we are either satisfied that appellate counsel has addressed the matters sufficiently or that no discussion is warranted.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of further representation of Scott 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*