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DISTRICT III

March 28, 2023

To:

Hon. Scott J. Nordstrand
Circuit Court Judge
Electronic Notice

Kristi Severson
Clerk of Circuit Court
St Croix County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Megan Elizabeth Lyneis
Electronic Notice

Kevin A. Leclaire
1510 Sunny Way Ct.
Anoka, MN 55303

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

2022AP1869-CRNM State of Wisconsin v. Kevin A. Leclaire (L. C. No. 2021CF135)

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).

Counsel for Kevin Leclaire has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ concluding that no grounds exist to challenge Leclaire's conviction for felony retail theft (intentionally taking and carrying away merchandise with a value exceeding \$500 but not exceeding \$5,000). Leclaire was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The single charge against Leclaire was based on an allegation that he had stolen a fish locator valued at approximately \$1,500 from a Fleet Farm store located in Hudson, Wisconsin. Leclaire's case proceeded to a jury trial, during which the State presented testimony from two Fleet Farm employees and a Hudson police officer. Security camera footage from the Hudson Fleet Farm was also played for the jury at trial.

A Fleet Farm loss prevention employee testified that on October 14, 2020, he was monitoring security camera footage in the Hudson store and observed a person walking into the fish locator aisle, which is "a very high theft area." When the person turned to face the camera, the employee recognized him as Leclaire, whom the employee knew from previous contacts. The employee saw Leclaire move through several aisles in the store and then move out of camera view. The employee later saw Leclaire "come out of one of the back aisles with a cart with a large white cardboard box" in it. The employee then saw Leclaire take the box out of the cart and exit the store with the box through a side door. The employee asked a store manager to call the police and directed the "gate guard" in the exterior "yard" area of the store to close the store's exterior gate. Leclaire was nevertheless able to exit the yard area of the store, and he proceeded into the parking lot.

The loss prevention employee ran into the parking lot and attempted to stop Leclaire from leaving. The gate guard also attempted to stop Leclaire from leaving the parking lot. Despite these efforts, Leclaire put the cardboard box inside a blue or silver Saab and got into the passenger side of the vehicle, which then drove away from the store. Both the loss prevention

employee and the gate guard identified Leclaire as the individual who took the cardboard box out of the store.

The loss prevention employee further testified that he later reviewed additional security camera footage, which showed a different individual entering the Hudson Fleet Farm with a large, white cardboard box in a cart. The individual proceeded to the fish locator aisle, took a fish locator valued at approximately \$1,500 off of the shelf, put the fish locator in his cart, and then proceeded out of camera view. Subsequent video footage showed the individual leaving the store without a cart or box.

After reviewing this security camera footage, the loss prevention employee went to the fish locator aisle and noted that the fish locator in question was missing. He checked the store's inventory, which showed that the store had one fish locator of that model in stock. He also checked "all of the surrounding aisles where [Leclaire] and the other guy were seen," but he did not find the fish locator.

A Hudson police officer testified that he was dispatched to the area surrounding the Hudson Fleet Farm on the night in question to look for a Saab sedan that had been involved in a theft at the store. While the officer was looking for that vehicle, dispatch informed him that a complainant had reported a "suspicious vehicle" in a nearby parking lot. The officer responded to that location, and the complainant told him that two men had exited a vehicle, one of the men removed the vehicle's front license plate, and the other man discarded a large, white cardboard box under a tree. The officer located both the license plate and the cardboard box.

Leclaire elected not to testify in his own defense at trial, and the defense rested without presenting any evidence. The jury found Leclaire guilty of the charged offense.

The circuit court withheld sentence and placed Leclaire on probation for two years, with 150 days of conditional jail time. The court ordered Leclaire to serve sixty days of that conditional jail time immediately, and it imposed and stayed the remaining ninety days. The court also ordered Leclaire to pay \$1,500 in restitution to Fleet Farm. The parties subsequently stipulated that Leclaire was entitled to sixteen days of sentence credit, and the court entered an amended judgment of conviction awarding him credit in that amount against his “ultimate sentence” in the event that his probation was revoked. After his amended judgment of conviction was entered, Leclaire filed multiple pro se requests asking the court to reduce the amount of conditional jail time that was not imposed and stayed. The court denied those requests.

The no-merit report addresses: (1) whether the evidence was sufficient to support the jury’s verdict; (2) whether the circuit court erred in making any evidentiary rulings; and (3) whether the court erroneously exercised its sentencing discretion. We agree with counsel’s description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

The no-merit report does not address whether any issues of arguable merit exist regarding: (1) jury selection; (2) the parties’ opening statements and closing arguments; (3) the jury instructions; (4) Leclaire’s decision not to testify in his own defense; and (5) the circuit court’s refusal to reduce Leclaire’s conditional jail time. Nevertheless, having independently reviewed the record, we are satisfied that none of these potential issues has arguable merit. In particular, we note that Leclaire has finished serving the sixty days of conditional jail time that were not imposed and stayed. Any challenge to the court’s refusal to reduce that conditional jail time would therefore be moot.

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 Megan Elizabeth Lyneis is relieved of her obligation to further represent Kevin Leclaire 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