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**DISTRICT I**

December 27, 2023

To:

Hon. Mark A. Sanders  
Circuit Court Judge  
Electronic Notice

Gabriel William Houghton  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Sara Lynn Shaeffer  
Electronic Notice

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

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2022AP2009-CR

State of Wisconsin v. Antowine Mitchell (L.C. # 2018CF3584)

Before White, C.J., Donald, P.J., and Geenen, 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).**

Antowine Mitchell appeals a judgment convicting him of multiple crimes. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup>

On July 31, 2018, the State charged Mitchell with multiple crimes: two counts of armed robbery (use of force); operating a vehicle without owner's consent (armed carjacking); and two counts of false imprisonment. According to the criminal complaint, on June 25, 2018, West

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

Allis police responded to an armed robbery complaint at a jewelry store. An employee of the store, L.R.D., told police that when she arrived at the store, she noticed “a black male in a grey suit with a fedora approach her and stand behind her.” The man—later identified as Mitchell—told L.R.D. that he was there to get his watch fixed. Mitchell followed L.R.D. into the store, told her he was robbing the store, and zip-tied L.R.D. and another employee, S.L.W. While the employees were zip-tied, Mitchell stole over \$200,000 in watches and jewelry. The employees were able to reach a panic button, prompting the police dispatch. After police arrived, L.R.D. noticed that her wallet and car keys were missing from her purse and that her car was missing. She also told police that Mitchell had a gun.

Approximately one month later, police received an anonymous phone call, in which the caller told police that he knew Mitchell and knew that Mitchell committed the robbery. The caller’s name appeared on the police station’s caller identification. Police eventually located a drug-overdosed Mitchell at the caller’s residence. Mitchell was transported to a hospital. Police found a large diamond ring in Mitchell’s pocket and also verified that the caller had recently sold jewelry that was taken from the jewelry store.

Detectives conducted two *Mirandized*<sup>2</sup> interviews of Mitchell, one while he was at the hospital and a second at the police station the following day. During these interviews, Mitchell admitted to committing the robbery. Mitchell also admitted that he stole watches and rings and drove off with L.R.D.’s car. He abandoned her car about a block from his residence (the same location it was recovered). Mitchell told police he pawned the jewelry at small shops.

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<sup>2</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966).

Prior to trial, Mitchell moved to suppress the statements that he made to the police at the hospital and the police department, arguing that the statements were made after he invoked his right to remain silent. The trial court held a hearing on the issue, where it discussed the recordings and heard testimony from the two detectives who conducted the interviews. The trial court denied Mitchell's motion, finding that he did not unequivocally invoke his right to remain silent.

Mitchell also filed a pretrial motion to exclude evidence of in-court identifications, arguing that "no formal eyewitness out-of-court identification procedures," like photo arrays or lineups, were conducted with L.R.D. or S.L.W., and that in-court identifications "may be more suggestive than showups." The trial court granted the motion to the extent that it ruled that the State could not elicit identification testimony from the victims, but that the victims were not precluded from "spontaneously identif[ying]" Mitchell as the perpetrator.

The matter proceeded to trial, where, as relevant to this appeal, the State did not elicit identification testimony, but L.R.D. did spontaneously identify Mitchell as the man who robbed the jewelry store. For reasons unrelated to L.R.D.'s identification, Mitchell's trial ended in a mistrial and the matter proceeded to a second trial. Prior to the second trial, the trial court informed the parties that the rulings from the first trial would remain in place. The trial court stated that "the denial of the *Miranda* motion will continue as will the limitations on in-court identification. Spontaneous identification I gather is appropriate, but soliciting an in-court identification is not."

L.R.D. testified at the second trial. The State asked L.R.D. whether she identified Mitchell at the prior trial. L.R.D. responded in the affirmative. S.L.W. also testified, telling the

jury that after the robbery, she realized that the suspect took her wallet, which included her BP gas card.

Multiple law enforcement agents also testified, telling the jury about surveillance videos and photos obtained from the jewelry store; interviews that they conducted with Mitchell; and the search of the “anonymous” caller’s residence, where officers found multiple jewelry pieces from the robbed store, information confirming that Mitchell was staying with the caller, and S.L.W.’s gas card. The jury also saw photographs obtained from surveillance footage, which clearly identified Mitchell. The jury also heard portions of the recorded interviews.

The jury convicted Mitchell of two counts of armed robbery (use of force); operating a vehicle without owner’s consent (armed carjacking); and two counts of false imprisonment. The trial court sentenced him to a total of twenty-two years and nine months of initial confinement and fifteen years of extended supervision. This appeal follows.

On appeal Mitchell contends that he is entitled to a new trial because the trial court erroneously denied his motion to suppress statements made to police during his first two recorded interviews and that he is entitled to a new trial in the interest of justice because L.R.D.’s identification testimony was prejudicial. We disagree.

Mitchell first argues that law enforcement failed to “scrupulously honor” his right to remain silent when conducting his first two interviews. Accordingly, he contends that any inculpatory statements he made during those interviews should have been suppressed. Assuming, without deciding, that the trial court should have suppressed Mitchell’s statements, we conclude that the error was harmless beyond a reasonable doubt. *See Chapman v. California*, 386 U.S. 18, 24 (1967) (holding that a constitutional error is considered harmless if

the court is “able to declare a belief that it was harmless beyond a reasonable doubt”); *State v. Dyess*, 124 Wis.2d 525, 543, 370 N.W.2d 222 (1985) (concluding that to find an error harmless, the court must find there is no “reasonable possibility” that the error “contributed to the conviction.”). Factors relevant to whether a constitutional error is harmless include: (1) the frequency of the error; (2) the importance of the erroneously admitted evidence; (3) the presence or absence of evidence corroborating or contradicting the erroneously admitted evidence; (4) whether the erroneously admitted evidence duplicates untainted evidence; (5) the nature of the defense; (6) the nature of the State’s case; and (7) the overall strength of the State’s case. *See State v. Nelson*, 2014 WI 70, ¶45, 355 Wis. 2d 722, 849 N.W.2d 317.

In examining the record as a whole, there is no reasonable possibility that a different result would have occurred had Mitchell’s statements not been admitted because other evidence tied Mitchell to the robbery. First, one of the victims identified Mitchell as the robber at trial. Second, the jury saw the surveillance video and the still photos from the jewelry store that showed Mitchell’s face during the robbery. Finally, the jury heard that when police searched the anonymous caller’s house, they found multiple items identifying Mitchell, jewelry, and S.L.W.’s gas card.

Mitchell also contends that he is entitled to a new trial in the interest of justice because L.R.D.’s identifying testimony was prejudicial. *See WIS. STAT. § 752.35* (allowing this court to reverse in its discretion “if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried”). Specifically, Mitchell contends that L.R.D.’s testimony was improperly admitted in a case where identification was the key issue, therefore, the real controversy was not tried. We agree with the State that because Mitchell does not separately argue that the identification evidence was improperly admitted, he

cannot make a standalone claim on that ground. Mitchell cannot seek reversal under an interest of justice theory on a claim that he could have, but did not, argue as a standalone claim. *See State v. Kucharski*, 2015 WI 64, ¶¶ 41-43, 363 Wis. 2d 658, 866 N.W.2d 697. Moreover, Mitchell has not shown why his case is exceptional under WIS. STAT. § 752.35. Our discretionary reversal power under § 752.35 is to be exercised only in exceptional cases. *See State v. Avery*, 2013 WI 13, ¶38, 345 Wis. 2d 407, 826 N.W.2d 60.

For the forgoing reasons, we affirm the judgment of conviction.

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

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*