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DISTRICT III

March 26, 2024

To:

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Circuit Court Judge
Electronic Notice

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Kathleen A. Lindgren
Electronic Notice

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

2023AP1679-CRNM State of Wisconsin v. Steven M. Bowe (L. C. No. 2018CF145)

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 Steven Bowe has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ concluding that no grounds exist to challenge Bowe's convictions for second-degree sexual assault, strangulation and suffocation, and false imprisonment. Bowe 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

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

that there is no arguable 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 State filed a criminal complaint charging Bowe with second-degree sexual assault, strangulation and suffocation, and false imprisonment. In connection with an anticipated plea agreement, the State later filed an Information charging Bowe with third-degree sexual assault, rather than second-degree sexual assault, and leaving the remaining charges unchanged.

During a subsequent hearing, Bowe's trial attorney indicated that he had concerns regarding Bowe's competency, and the circuit court ordered a competency examination. A court-appointed examiner later submitted a report opining that Bowe was competent to proceed. The court then held a competency hearing, during which Bowe's attorney agreed that the court could receive the report into evidence and could proceed without taking testimony. Based on the report, the court found that Bowe was competent to proceed.

Thereafter, it became apparent that Bowe would not be entering pleas as previously anticipated. The State therefore sought permission to file an amended Information containing the same charges as alleged in the complaint. The circuit court granted the State's motion, over Bowe's objection.

The case was subsequently tried to a jury. At trial, Bowe's former girlfriend, Amanda,² testified that on January 19, 2018, while she and Bowe were living together, they were in a car and got into an argument about whether to sell a Chevy Blazer that they owned. At a stoplight,

² Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim's name.

Amanda took off her seat belt, intending to exit the vehicle. Bowe demanded that she put the seat belt back on, and when she refused, he wrapped the seat belt around her neck and tightened it, so that she could not breathe.

Amanda testified that later that evening, Bowe “offered a massage to help smooth things over.” Amanda agreed to the massage and took off all of her clothing, except for her underwear. During the massage, Bowe started to remove Amanda’s underwear, and she told him not to. He removed her underwear anyway, and he then forcibly engaged in penis-to-vagina intercourse with her while pinning her down on the bed, even though Amanda told him “no” at least twice.

Amanda testified that the next morning, she decided to end her relationship with Bowe and told him that she was “done.” Bowe did not accept her decision and blocked her from leaving their residence. At some point, Amanda was able to leave and ran to her vehicle. After Amanda got into her vehicle, Bowe blocked her from leaving and demanded that she give him her phone, which they were sharing at the time because Bowe’s phone was broken. Amanda testified that Bowe was hitting the hood of her car with his fists, yelling, and “causing a big scene.” Amanda eventually gave Bowe the phone so that she could leave.

A neighbor of Amanda and Bowe testified that she called 911 on January 20, 2018, after observing a disturbance outside of her residence. She initially heard “a lot of loud hollering and noises.” When she went outside, she saw a car backing out to leave, and a man “jumped on the hood of the car and was pounding on it, ... stating ... something to the effect of you’re not going anywhere, you’re not leaving, using profanity, and just pounding on the windshield.”

A police sergeant testified that she met with Amanda on January 20 and photographed “handprints and smear marks” on the hood of Amanda’s vehicle, which were “consistent with

[Amanda's] story.” The police sergeant also observed and photographed red marks on Amanda's neck “that were consistent with strangulation.” The photographs of the vehicle and Amanda's neck were introduced into evidence at trial.

Following a colloquy with the circuit court, Bowe elected to testify in his own defense. He denied wrapping a seat belt around Amanda's neck, sexually assaulting her, or preventing her from leaving their residence. The defense also presented the testimony of Bowe's nephew, Robert Ottman, who testified about Bowe and Amanda's whereabouts on the evening of January 19 and corroborated portions of Bowe's testimony regarding the events that night.

The jury ultimately returned guilty verdicts on all three of the charges against Bowe. The circuit court ordered a presentence investigation report (PSI), and the defense submitted an alternative PSI. At sentencing, the court expressly considered probation but concluded that it would unduly depreciate the seriousness of Bowe's offenses. After considering the gravity of the offenses, Bowe's character and rehabilitative needs, the need to protect the public, and the need for punishment, the court imposed concurrent sentences totaling eight years' initial confinement followed by eight years' extended supervision. The parties agreed that Bowe was entitled to 262 days of sentence credit, and the court granted him credit in that amount.

The no-merit report addresses two issues: (1) whether there was sufficient evidence to support Bowe's convictions; and (2) whether the circuit 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) the circuit court's determination that Bowe was competent to stand trial; (2) the

court's decision allowing the State to amend the Information; (3) the court's rulings on Bowe's motions in limine; (4) jury selection; (5) the court's removal of a juror after the jury was impaneled; (6) the court's rulings on Bowe's objections at trial; (7) the parties' opening statements and closing arguments; (8) Bowe's waiver of his constitutional right not to testify; (9) the jury instructions; (10) the court's responses to questions raised by the jury during its deliberations; and (11) the effectiveness of Bowe's trial attorneys. Nevertheless, having independently reviewed the record, we are satisfied that none of these potential issues has arguable merit.

First, the circuit court properly found Bowe competent to proceed based on the court-appointed examiner's report. *See* WIS. STAT. § 971.14(4)(b).

Second, the circuit court did not erroneously exercise its discretion by granting the State's motion to amend the Information. "We will not reverse a [circuit] court's decision to amend an information unless there was a clear or manifest misuse of discretion." *See State v. Neudorff*, 170 Wis. 2d 608, 615, 489 N.W.2d 689 (Ct. App. 1992). A court erroneously exercises its discretion by allowing the State to amend the Information if the amendment prejudices the defendant's right to notice, to a speedy trial, or to present a defense. *Id.*

Here, the circuit court appropriately determined that the State's proposed amendment to the Information did not prejudice Bowe's right to notice, given that the complaint had originally charged Bowe with second-degree sexual assault. Furthermore, there is no indication that Bowe's right to a speedy trial was violated as a result of the amendment. In addition, there is no basis to conclude that the amendment prejudiced Bowe's right to present a defense. As the State noted during the hearing on the motion to amend, under the circumstances of this case, the only

difference between the two sexual assault charges was that the second-degree sexual assault charge required the State to prove that Bowe used force when having nonconsensual sexual intercourse with Amanda, whereas the third-degree sexual assault charge merely required the State to prove that he had nonconsensual sexual intercourse with her. *Compare* WIS. STAT. § 940.225(2)(a) *with* § 940.225(3)(b). Bowe’s defense was the same with respect to either charge—namely, that Amanda consented to the sexual intercourse. On these facts, the court could reasonably conclude that Bowe would not be prejudiced by the State’s proposed amendment to the Information.

Third, there is no arguable basis to claim that the circuit court erroneously exercised its discretion when ruling on Bowe’s motions in limine.

Fourth, no errors occurred during jury selection. With the parties’ agreement, the circuit court removed one potential juror for cause after she reported that she was a victim of sexual assault and that her personal experience might “overwhelm” her when listening to the testimony. No other potential juror’s answers during voir dire gave rise to an arguable basis to remove any potential juror for cause.

Fifth, the circuit court properly removed one of the thirteen jurors after the jury was impaneled. Before the parties’ opening statements, a member of the jury pool who was not selected to be on the jury told a bailiff that one of the jurors had failed to disclose during voir dire that her nephew was a victim of sexual assault. That juror was then questioned in chambers and reported that her nephew was not a victim of sexual assault but had recently been convicted of sexual assault. The State asked the court to remove the juror and to proceed without an

alternate. Bowe's attorney objected to that procedure, stating that Bowe would prefer to have an alternate.

The circuit court removed the juror for cause, based on her failure to disclose the information regarding her nephew during voir dire and the possibility that she could taint the jury by "expressing information during deliberations about what happened" in her nephew's case. The court noted that Bowe had no constitutional right to an alternate juror and that the case could proceed with a jury of twelve. Under these circumstances, there would be no arguable merit to a claim that the court erroneously exercised its discretion by removing the juror in question for cause. *See State v. Gonzalez*, 2008 WI App 142, ¶10, 314 Wis. 2d 129, 758 N.W.2d 153 ("A [circuit] court has the discretion to remove a juror for cause during a trial proceeding.").

Sixth, the circuit court overruled three objections by Bowe's attorney during Amanda's direct examination. With respect to a fourth objection when the State asked Amanda whether Bowe "probably is twice the size of you weight-wise," the court sustained that objection but noted, "Well, there's definitely a size difference in looking at these two individuals here today. On the record, I will make that observation." There is no arguable basis to claim that the court erroneously exercised its discretion when ruling on these objections. In any event, any error with respect to these rulings would have been harmless within the context of the entire trial. *See State v. Thoms*, 228 Wis. 2d 868, 873, 599 N.W.2d 84 (Ct. App. 1999) (setting forth the test for harmless error). The court did not rule adversely to Bowe on any other objections.

Seventh, nothing improper occurred during the parties' opening statements or closing arguments. Eighth, the circuit court conducted an appropriate colloquy with Bowe regarding his waiver of his constitutional right not to testify. Ninth, the jury instructions accurately conveyed

the applicable law and burden of proof. Tenth, the court appropriately responded, with the parties' agreement, to four questions raised by the jurors during their deliberations. Eleventh, our independent review of the record does not reveal any arguable grounds to challenge the effectiveness of Bowe's trial attorneys.

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 Kathleen Lindgren is relieved of further representation of Steven Bowe in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals