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DISTRICT I

November 26, 2024

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

2023AP1490-CRNM State of Wisconsin v. Jasmine C. Daniels (L.C. # 2020CF2541)

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).

Jasmine C. Daniels appeals her judgment of conviction entered after she pled guilty to neglecting a child where the consequence is death. Her appellate counsel, Jill Marie Skwor, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT.

RULE 809.32 (2021-22),¹ concluding that further postconviction or appellate proceedings would lack arguable merit. Daniels filed a response. Counsel was directed by this court to file a supplemental no-merit report, and Daniels filed a supplemental response.² Upon review of the record and submissions, we conclude that Daniels could pursue an arguably meritorious claim that the circuit court erred in denying her motion to suppress the statements she made to police during her custodial interviews. Accordingly, we reject the no-merit report, dismiss this appeal without prejudice, and extend the deadline for filing a postconviction motion.

The charge against Daniels stemmed from the shooting death of her two-year-old daughter, Z.M.S., in July 2020, at a residence on North 105th Street in Milwaukee. A neighbor heard a gunshot from inside the residence, and then observed Daniels run outside holding a small child who was covered in blood. That neighbor observed a male with a gun in his waistband exit the residence and get into a silver vehicle. The police and paramedics were called and life-saving measures were performed on Z.M.S., but she was pronounced dead while she was being transported to the hospital.

Daniels provided different versions of the incident to police. First, she said that Z.M.S. had been shot during a drive-by shooting. However, the officers who secured the scene observed

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

² Daniels' initial response did not raise any potentially meritorious issues; rather, she stated that she was seeking release from prison. Daniels' supplemental response was a letter filed on September 18, 2024, indicating that she has additional information regarding meritorious claims from her previous appointed attorney. However, she did not provide any specific information about those claims.

a trail of blood leading into the residence and down to the basement where Daniels lived, where there was a pool of blood. When confronted with this information, Daniels changed her story, instead stating that her three-year-old son, J.D., had accidentally shot Z.M.S. with a gun that Daniels had found in the park. The officers asked to enter the residence to search for the gun, but Daniels refused, saying “[y]ou won’t find it.” Daniels was arrested for obstruction.

The police obtained a search warrant for the basement of the residence. The gun was not found. Additionally, officers reviewed surveillance video of the outside of the residence from just after the shooting. The video showed Trayrell Nettles, the father of Daniels’ youngest child, exiting the residence as Daniels carried out a bleeding Z.M.S., and then leaving the scene.

The police conducted several custodial interviews of Daniels. In the first interview, she again stated that J.D. had accidently shot Z.M.S., and maintained that she and the children were the only people in the basement at the time of the shooting. During a second custodial interview, approximately thirteen hours later, Daniels said that it was not J.D. who had shot Z.M.S., but rather an unknown man who had come into the basement and started cleaning a gun. She said that she heard a gunshot, and the unknown man fled the residence. However, there was no one in the surveillance video matching the description provided by Daniels of the unknown man. Daniels also denied that Nettles was at the residence, and had no explanation of where the gun had gone after the shooting.

During a third custodial interview the day after her arrest, Daniels said that a person named Eddie, who was wearing all black, had shot Z.M.S. However, no one matching that description was seen on the surveillance video. Finally, during the third interview, Daniels

confessed that she had accidentally shot Z.M.S. while “playing with the rack on the gun.” Daniels was charged with first-degree reckless homicide.

Daniels filed a motion to suppress her custodial statements, arguing that she had invoked her right to counsel, and that her statements were coerced and therefore involuntary. The record indicates that Daniels requested an attorney at the beginning of her first custodial interview, at approximately 3:00 a.m. She was informed by the detectives that an attorney would not be available until about 9:00 a.m. She then agreed to speak with the detectives.

However, at the hearing on the suppression motion, Daniels asserted that a public defender is on call twenty-four hours a day, seven days a week to provide representation at custodial interviews. The State argued that the detectives were not aware of the availability of an on-call public defender. However, the detectives did not testify at the hearing. Instead, the State offered to provide affidavits from the detectives regarding this issue; however, none were filed. Furthermore, Daniels filed an affidavit from the Regional Attorney Manager for the Milwaukee Trial Office of the State Public Defender (SPD) regarding the availability of a public defender for custodial interviews. The affidavit stated that the SPD had provided a contact phone number to the Milwaukee Police Department (MPD) for this service when it was implemented in 1978, and that MPD regularly calls the number several times each month.

Daniels also argued that her confession was coerced based on her “cognitive abilities, education, and mental health at the time of the interrogations.” She indicated that she had recently lost a child to sudden infant death syndrome a few months prior to this incident, had limited education and cognitive difficulties, and had been sexually assaulted as a teenager. Daniels also pointed to the tactics used by the detectives during the first custodial interview, such

as telling Daniels that she was a “horrible person,” and that although she had given birth to her children she was “no mother.”

In its findings, the circuit court agreed with the State that the detectives likely did not know about the availability of a public defender—even in light of the affidavit by the SPD stating the contrary, and without hearing any testimony from the detectives. Rather, the court merely indicated that it was not aware of the SPD’s availability policy.

Additionally, the circuit court acknowledged that the detectives were a “bit rough” at times during the first custodial interview. However, it opined that this conduct was due to the detectives being “frustrated” and “pissed off” about Daniels’ lack of cooperation, because they clearly believed she was lying. The court found that the detectives likely were not aware of Daniels’ cognitive, educational, and mental health issues. However, the record indicates that these issues were discussed with Daniels at the beginning of the interview.

The circuit court denied Daniels’ motion to suppress. Approximately one week later, Daniels entered a guilty plea to an amended charge of neglecting a child where the consequence is death.

In reviewing a circuit court’s decision on a motion to suppress, this court will not reverse the circuit court’s findings of fact unless they are clearly erroneous, and we review *de novo* the application of constitutional principles to those facts. *State v. Eason*, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625. In the supplemental no-merit report, appellate counsel concedes that the circuit court made “questionable” factual findings at the suppression hearing. Nevertheless, counsel concludes that there would be no merit to challenge its legal conclusions,

because Daniels did not provide any new information in the first custodial interview where the potential violations first occurred. Counsel further states that any errors would not overcome the harmless error test. *State v. Rockette*, 2005 WI App 205, ¶25, 287 Wis. 2d 257, 704 N.W.2d 382 (“In a guilty plea situation following the denial of a motion to suppress, the test for harmless error on appeal is whether there is a reasonable possibility that the erroneous admission of the disputed evidence contributed to the conviction.” (Citation omitted.)). However, these conclusions do not address the issue of the factual findings that are unsupported by the record, as described above.

When resolving an appeal under WIS. STAT. RULE 809.32, the question is whether a potential issue would be “wholly frivolous.” *State v. Parent*, 2006 WI 132, ¶20, 298 Wis. 2d 63, 725 N.W.2d 915. The test is not whether the lawyer should expect the argument to prevail. *See* SCR 20:3.1, cmt. (providing that an action is not frivolous even though the lawyer believes his or her client’s position will not ultimately prevail). Instead, the question is whether the potential issue so lacks a basis in fact or law that it would be unethical for the lawyer to prosecute the appeal. *See McCoy v. Court of Appeals*, 486 U.S.429, 436 (1988).

We are not persuaded that it would be frivolous to argue that the circuit court erred in denying Daniels’ motion to suppress. We emphasize that we do not reach any conclusion that such arguments would or should prevail. Rather, we conclude only that the arguments would not be frivolous within the meaning of WIS. STAT. RULE 809.32 and *Anders*.

Because we cannot conclude that further proceedings to challenge the circuit court’s denial of the motion to suppress would be wholly frivolous, we must reject the no-merit report filed in this case. We add that our decision does not mean we have reached a conclusion in

regard to the arguable merit of any other potential issue in the case. Daniels is not precluded from raising any issue in postconviction proceedings that counsel may now believe has merit.

IT IS ORDERED that the no-merit report is rejected and this appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that this matter is referred to the Office of the State Public Defender to consider appointment of new counsel for Daniels, any such appointment to be made within forty-five days after this order.

IT IS FURTHER ORDERED that the State Public Defender's Office shall notify this court within five days after either a new lawyer is appointed for Daniels or the State Public Defender determines that new counsel will not be appointed.³

IT IS FURTHER ORDERED that the deadline for Daniels to file a postconviction motion is extended until forty-five days after the date on which this court receives notice from the public defender's office advising either that it has appointed new counsel for Daniels or that new counsel will not be appointed.

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

Samuel A. Christensen
Clerk of Court of Appeals

³ While this opinion and order was pending, appellate counsel filed a motion to withdraw as counsel. Based on the directives set forth in this opinion and order, we take no action on that motion.