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November 15, 2016

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

2015AP2528-CRNM State of Wisconsin v. Jeffrey W. Hadley (L. C. No. 2013CM4684)

Before Stark, P.J.[1]

Counsel for Jeffrey Hadley has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding no grounds exist to challenge Hadley's conviction for retail theft of less than or equal to $500 merchandise, contrary to WIS. STAT. § 939.50(1m)(d). Hadley has filed a response challenging the sufficiency of the evidence to support his conviction. Upon an independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), this

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Hadley with retail theft by intentionally concealing merchandise held for resale by Walgreens, without the consent of the merchant, and with intent to deprive the merchant permanently of the full purchase price of the merchandise. Hadley was convicted upon a jury's verdict of the crime charged. Out of a maximum possible nine-month sentence, the court imposed seven months in the house of corrections.

Any challenge to the jury's verdict would lack arguable merit. When reviewing the sufficiency of the evidence, we must view the evidence in the light most favorable to sustaining the jury's verdict. *See* ***State v. Wilson***, 180 Wis. 2d 414, 424, 509 N.W.2d 128 (Ct. App. 1993). At trial, Steven Rezmer, a Walgreens store manager, testified that using store surveillance cameras, he observed Hadley put a six-pack of "5-hour Energy" drinks inside the "bicep area," near the armpit of his zipped up jacket. Rezmer, who was wearing a grey Walgreens vest and name tag, then proceeded to the front of the store, and stood in front of the main exit doors to make contact with Hadley. Rezmer testified that when Hadley was beyond the cash registers, approximately six feet from where Rezmer was standing, Hadley noticed Rezmer and turned around to go back into the store as if he had forgotten something. When Rezmer followed Hadley back into an aisle of the store, he observed Hadley reach inside his jacket, pull out the energy drinks and place them on a mid-aisle table.

Rezmer testified that during a verbal exchange, Hadley stated, "I put them back" and when Rezmer questioned whether Hadley had anything else on him, Hadley responded, "What? You got me. I put it right there." Hadley nevertheless gave Rezmer permission to check him for

any other merchandise, and also allowed Rezmer to hold Hadley's wallet during the search. When Rezmer began to pat-down Hadley's ankles, Hadley became "upset" and left the store, leaving his wallet behind. Rezmer followed Hadley to the parking lot, where Hadley entered a minivan that drove away. Rezmer gave the minivan's license plate number and Hadley's wallet to police. Rezmer also testified the pack of energy drinks retailed for $55.96. The jury was shown the store's surveillance video, and still shots of Hadley within the store and exiting through the outer door of the store.

Although Hadley challenges the credibility of Rezmer's testimony, it is the jury's function to decide the credibility of witnesses and reconcile any inconsistencies in the testimony. ***Morden v. Continental AG***, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. A jury is free to piece together the bits of testimony it found credible to construct a chronicle of the circumstances surrounding the crime. *See* ***State v. Sarabia***, 118 Wis. 2d 655, 663-64, 348 N.W.2d 527 (1984). Further, "[f]acts may be inferred by a jury from the objective evidence in a case." ***Shelley v. State***, 89 Wis. 2d 263, 273, 278 N.W.2d 251 (Ct. App. 1979). The evidence submitted at trial is sufficient to support Hadley's conviction.

Any challenge to Hadley's waiver of his right to testify would lack arguable merit. "[A] criminal defendant's constitutional right to testify on his or her behalf is a fundamental right." ***State v. Weed***, 2003 WI 85, ¶39, 263 Wis. 2d 434, 666 N.W.2d 485. The circuit court must therefore conduct an on-the-record colloquy with a criminal defendant to ensure that: (1) the defendant is aware of his or her right to testify; and (2) the defendant has discussed this right with his or her counsel. ***Id.***, ¶43. Here, the court engaged Hadley in an on-the-record colloquy, informing him of both his right to testify and his right to not testify. After indicating that he had

sufficient time to discuss his rights with counsel, Hadley confirmed he was waiving his right to testify. There is no arguable merit to challenge this waiver.

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Before imposing a sentence authorized by law, the court considered the seriousness of the offense; Hadley's character, including his extensive criminal history; the need to protect the public; and the mitigating circumstances Hadley raised. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. It cannot reasonably be argued that Hadley's sentence is so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

An independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Matthew Lynch is relieved of further representing Hadley in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals