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DISTRICT I

March 24, 2026

To:

Hon. Daniel J. Borowski
Circuit Court Judge
Electronic Notice

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

John Blimling
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

Jhaylen L. McCaskill 656833
Stanley Correctional Institution
100 Corrections Drive
Stanley, WI 54768

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

2024AP1260-CRNM State of Wisconsin v. Jhaylen L. McCaskill (L.C. # 2019CF5441)

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

Jhaylen L. McCaskill appeals his judgment of conviction for first-degree intentional homicide and attempted first-degree intentional homicide, both with the use of a dangerous weapon as a party to a crime, and felon in possession of a firearm. His appellate counsel, Leonard D. Kachinsky, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2023-24).[1] McCaskill received a copy of the report and

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

filed a response. Upon this court's independent review of the record as mandated by ***Anders***, counsel's report, and McCaskill's response, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

In November 2019, police responded to a shooting on North 44th Street in Milwaukee, where they found two shooting victims inside of a vehicle. The victim in the driver's seat, Darnell Woodard, was pronounced dead at the scene. The other victim who was in the passenger seat, M.S., had been shot in the leg and had a graze wound to the head. He was taken to the hospital for treatment.

M.S. told police that Woodard was a drug dealer and was conducting drug transactions the night of the shooting. M.S. said Woodard received a call from a man he referred to as "Fresh," and arranged to meet him for a drug deal. When they arrived at the location, a black Lexus pulled up behind them. A man got out of that vehicle and into the backseat of Woodard's vehicle. As Woodard began measuring and packaging the drugs, the man pulled out a gun and demanded the drugs and money. M.S. said that a second man then opened the driver's side door and shot multiple times into the front seat of Woodard's vehicle, hitting M.S. and Woodard. M.S. stated that he did not know either of the assailants.

Police located surveillance video of the Lexus in the area of the shooting and were able to trace the license plate to its registered owner, K.T. K.T. told police he regularly bought drugs from a dealer he knew as "Fresh" and that another man he knew as "Bam" was often with Fresh. K.T. stated that on the night of the shooting, he had let Fresh and Bam borrow his Lexus. From

photographs shown to him by police, K.T. identified McCaskill as Bam. He also identified a photo of Devin R. Jones as Fresh, who was arrested and charged along with McCaskill.[2]

M.S. viewed separate live lineups with McCaskill and Jones. M.S. identified Jones as the man who got into the backseat of Woodard's vehicle and demanded drugs and money, and McCaskill as the man who opened the driver's door and shot into the vehicle.

McCaskill filed a motion to suppress M.S.'s identification from the lineup on the grounds that it was impermissibly suggestive. He argued that several of the men in the lineup had facial hair while McCaskill did not, and that the height and complexion of the other men was not comparable. After a hearing, the circuit court denied the motion, finding that the lineup was not impermissibly suggestive and was conducted in accordance with standard procedures and requirements.

The matter proceeded to trial in February 2022. Witnesses for the State included M.S.; K.T., the owner of the Lexus; officers who responded to and investigated the shooting; detectives who conducted the lineup; and the medical examiner.

The jury found McCaskill guilty as charged. The circuit court imposed a mandatory life sentence with the possibility for extended supervision in 50 years for the first-degree intentional homicide count, with concurrent sentences for the other two counts. This no-merit appeal follows.

[2] The cases were initially joined; however, Jones was not tried with McCaskill.

With regard to pretrial matters, the no-merit report discusses the denial of McCaskill's motion to suppress M.S.'s identification of McCaskill from the lineup. As discussed above, McCaskill asserted that the lineup was impermissibly suggestive, arguing that there were significant differences in the other participants' height, facial hair, and complexion.

In challenging identification evidence, a defendant would first have to establish that the procedure used in the identification was impermissibly suggestive. ***Powell v. State***, 86 Wis. 2d 51, 65-66, 271 N.W.2d 610 (1978). This burden is met if it is shown that the procedure used would "give rise to a very substantial likelihood of irreparable misidentification." ***Id.*** at 64 (citation omitted). If the defendant meets that burden, the State must then demonstrate that "despite the suggestiveness of the procedures," the identification was nevertheless reliable "under the totality of the circumstances." ***Id.*** at 65-66. The circuit court's findings of fact are upheld on review unless they are clearly erroneous. ***State v. Eason***, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625.

At the hearing on the suppression motion, the detective who prepared the lineup did not testify because he had retired and lived out of state. However, another detective—who was trained by the retired detective—testified as to the procedures for choosing "fillers" for lineups. He stated that they are limited to choosing individuals from the Milwaukee County Jail to act as fillers in the lineup. They choose fillers based on several objectives such as age, height, weight, hair, and complexion, trying to get as close to possible as the subject. The fillers are chosen from their booking photos, and the detective noted that those photos are sometimes different than an inmate's current appearance. Therefore, they select more potential fillers than are necessary so that there are additional options.

Based on that testimony, along with reviewing photos and video of the lineup, the circuit court found that the lineup was not impermissibly suggestive. The court observed that a lineup is not required to be "perfect," and that the lineup here was prepared and conducted pursuant to constitutional requirements and procedures. It further stated that the arguments raised by McCaskill regarding the identification could be raised on cross-examination.

In the no-merit report, appellate counsel states that the circuit court's findings are supported by the record, and therefore there would be no merit to an argument challenging its denial of the motion to suppress. We agree with counsel's assessment.

The no-merit report also discusses the procedures employed at trial, including jury selection, evidentiary objections and the circuit court's response, and closing arguments, and found no issues of arguable merit. The report further addresses the sufficiency of the evidence, detailing the evidence presented by the State. The report set forth the applicable standard of review, noting that it is up to the jury to assess witness credibility. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 501, 503, 451 N.W.2d 752 (1990). We agree with appellate counsel's assessment that there are no issues of arguable merit relating to the trial or the pretrial proceedings.

Next, the no-merit report discusses the circuit court's exercise of its discretion during sentencing. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The record reflects that the circuit court considered relevant sentencing objectives and factors. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court called the shooting "callous" and "brazen" in firing multiple shots into the vehicle "at pretty much pointblank range," and observed that in addition to killing Woodard, M.S. was "severely and significantly" injured in the shooting.

We agree with appellate counsel's conclusion that there would be no merit to a challenge of the circuit court's exercise of its sentencing discretion. We further note that the sentences imposed are within the statutory maximums and are thus presumed not to be unduly harsh or unconscionable. *See* ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

In his response, McCaskill claims that his trial counsel was ineffective for failing to investigate and call two potential alibi witnesses at trial. McCaskill provides no further information as to who these witnesses are or what their testimony would be. However, in the no-merit report, appellate counsel addresses a potential alibi claim raised by McCaskill. Counsel explains that he investigated McCaskill's claim that there was alibi evidence relating to cell tower pinging records that would place him miles away from the shooting, and that such evidence was on the cell phone of a relative. Counsel states that after almost two years of investigation, he uncovered no evidence relating to this claim. He therefore concluded that there was no basis for a claim of ineffective assistance by McCaskill's trial counsel.

McCaskill also raises a claim in his response regarding the lineup, stating that "my victim"—presumably M.S.—was shown his picture before viewing the lineup. Indeed, trial counsel for McCaskill raised the issue of the lineup identification during the cross-examination of M.S., eliciting testimony that M.S. had seen pictures of the suspects in the shooting on television or social media prior to viewing the lineup. However, M.S. maintained that he recognized McCaskill from the shooting primarily because of his eyes, as M.S. had briefly made eye contact with the shooter when he opened the driver's door just before opening fire. Thus, the

jury was able to consider this information in weighing the credibility of M.S. *See* ***Poellinger***, 153 Wis. 2d at 503.

Therefore, we conclude that McCaskill has raised no issues of arguable merit in his response.[3] Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent McCaskill further in this appeal.

For all the foregoing reasons,

Therefore,

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

IT IS FURTHER ORDERED that Attorney Kachinsky is relieved of further representation of McCaskill 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

[3] McCaskill also claims in his response that he has newly discovered evidence relating to his case, but did not provide any information as to what that evidence is. He further claims that appellate counsel should have investigated the circuit court judge, who McCaskill asserts has been "under investigation for years now for a number of things" including "over looking [sic] evidence," with no further explanation or support. We do not consider these claims as they are undeveloped and unsupported. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).