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DISTRICT I

July 14, 2026

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

Angela Conrad Kachelski
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Anna Hodges
Clerk of Circuit Court
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Donte Semaj Harris Jr. 212513
Waupun Correctional Institution
P.O. Box 351
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John Blimling
Electronic Notice

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

2024AP290-CRNM State of Wisconsin v. Donte Semaj Harris, Jr. (L.C. # 2018CF1929)

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

Donte Semaj Harris, Jr. appeals his judgments of conviction for first-degree reckless homicide and being a felon in possession of a firearm, and the order denying his postconviction motion.¹ Harris's appellate counsel has filed a no-merit report pursuant to *Anders v. California*,

¹ Harris's first trial, which resulted in the conviction on the felon in possession charge but a hung jury on the homicide charge, was before the Honorable David L. Borowski. The homicide charge was amended and retried by the State, before the Honorable Janet C. Protasiewicz. Harris's postconviction motion was heard and decided by the Honorable Ellen R. Brostrom.

386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2023-24).² Harris received a copy of the report and filed a response.³ Upon this court’s independent review of the record as mandated by *Anders*, counsel’s report, and Harris’s response, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. See WIS. STAT. RULE 809.21.

I. Offense and Investigation

In April 2018, police officers responded to a report of a suspicious object next to some garbage cans in an alley near a residence on South 11th Street in Milwaukee. They discovered the body of a female, later identified as Jessica Rodriguez, wrapped in a deflated air mattress tied with an extension cord. Rodriguez had sustained gunshot wounds to her knee and chest.

A neighbor, J.G., told police that Rodriguez was a prostitute who frequented the residence on South 11th Street, a known drug house. Police searched that residence, finding identification for H.W. Police interviewed H.W., who admitted to being a drug user who purchased crack cocaine from Harris at the residence on South 11th Street. H.W. also said he knew Rodriguez from the drug house.

H.W. told police that he was at the residence when Rodriguez was killed. He stated that Harris and Rodriguez had been arguing, and that he saw Harris shoot Rodriguez. A search of the

² The no-merit report was filed by Attorney Marcella De Peters, who has been replaced by Attorney Angela C. Kachelski as Harris’s appellate counsel.

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

³ Harris, after receiving six extensions, filed his response almost 17 months after the no-merit report was filed.

house revealed various drug paraphernalia, as well as a box for the same brand of air mattress in which Rodriguez's body was found. A gun was also recovered during the search, but it was later determined not to be the weapon used to shoot Rodriguez. In a subsequent search of the house, blood found in the kitchen was determined to be Rodriguez's blood through DNA testing.

II. Trial Proceedings

Harris was charged with first-degree intentional homicide and possession of a firearm by a felon. The matter proceeded to trial in October 2018.

The State's witnesses included H.W., along with two other eyewitnesses—J.T. and M.D.—who were also drug users, and who initially lied to police about being present at the South 11th Street residence when Rodriguez was killed. Both of these witnesses testified that they eventually told police that they were present when Rodriguez was killed, and that Harris had shot her. They explained that they initially lied out of fear of Harris. H.W. and M.D. also admitted that they were receiving immunity from charges related to Rodriguez's death in exchange for their testimony—H.W. had been charged with hiding a corpse, and M.D. for aiding a felon, for their actions in moving Rodriguez's body after she was shot.

Other witnesses for the State included J.G., the neighbor who told police Rodriguez frequented the drug house; various police detectives involved in the investigation; and the medical examiner.

Harris testified in his own defense. He said that "Flav," who ran the drug house, had shot Rodriguez for stealing guns and drugs from him.

The jury returned a guilty verdict as to the felon in possession of a firearm count, but could not reach a verdict on the homicide charge. The verdict on the felon in possession charge was accepted, and Harris was sentenced to the maximum term of five years of initial confinement followed by five years of extended supervision, along with a \$5,000 fine.

The State retried Harris for the homicide in April 2019 after amending the information to a charge of first-degree reckless homicide. J.T. and M.D. once again testified that Harris had shot Rodriguez. H.W. was under subpoena but did not appear; he was found to be unavailable by the court, and his testimony from the first trial was read into the record. Harris again testified in his own defense.

The jury found Harris guilty of first-degree reckless homicide, as charged in the amended information. He was sentenced to the maximum term of 40 years of initial confinement and 10 years of extended supervision, to be served consecutively to his sentence for being a felon in possession of a firearm.

III. Postconviction Proceedings

Harris filed a postconviction motion arguing that (1) his trial counsel was ineffective for failing to call a material witness; (2) the circuit court erred in allowing H.W.'s testimony from the first trial to be read in when he failed to appear at the second trial; and (3) newly discovered evidence entitled him to a new trial. A hearing was held on the motion over several dates between June and November 2023.

With regard to the first claim, the alleged material witness was an inmate, Jermarro Dantzler, who was in the booking room with Harris at the Milwaukee County Jail a few days

before the start of Harris's second trial. J.T. was also present in the booking room that day. Dantzler provided an affidavit submitted with Harris's postconviction motion, claiming that he witnessed J.T. say to Harris that Flav had paid her and M.D. to testify that Harris had killed Rodriguez, and threatened to kill them if they did not so testify. Dantzler testified at the postconviction hearing regarding the booking room exchange.

Harris claimed he told his trial counsel about the exchange in the booking room, although Harris did not know who Dantzler was at the time. Harris alleged in his postconviction motion that counsel was ineffective for failing to investigate the other inmates present in the booking room that day who had potentially overheard the conversation.

Harris's trial counsel, Attorney Susan Roth, also testified at the postconviction hearing. She admitted that she did not remember many details regarding the exchange as told to her by Harris. However, she stated that she likely had "reasons to doubt the credibility or plausibility of what was being relayed" to her; otherwise, she would have sent an investigator to the jail to speak with J.T. Indeed, Attorney Roth was familiar with Dantzler from a previous case in which he was charged with sexually assaulting a child, and "concocted an elaborate fictional alibi defense" that involved a "bizarre story" of how his semen ended up in the child's underwear. This fabricated story invented by Dantzler was corroborated by the sentencing transcript from that case, of which the circuit court here took judicial notice. The court thus concluded that Dantzler would have made a "terrible witness" for Harris's defense.

Additionally, the State introduced recorded jail calls made by Harris that further called into question the credibility of J.T.'s alleged booking room admission. The calls were made to Harris's sister shortly after he saw J.T. in the booking room, and to a friend after J.T. testified at

his second trial. During the calls, Harris talked about seeing J.T. in the booking room and about her testimony, but did not even mention the purported admission about being paid off by Flav to blame the shooting on Harris. The circuit court found it “completely implausible” that Harris did not mention the exchange with J.T. during the phone calls, since the information “would have served to exculpate him.” Furthermore, the court noted that Harris did not attempt to provide this information during his own testimony.

In its decision denying the postconviction motion, the circuit court observed that Attorney Roth’s “entire defense” of Harris was “that Flav was to blame” for Rodriguez’s death, and that “[a]ny information pertaining to an alleged pay-off or death threats by [Flav] to avoid liability would have been fruitful evidence to support her defense theory—had it seemed credible.” The court thus found Attorney Roth’s testimony credible as it “matche[d] what a competent attorney like Ms. Roth would likely have done.” It therefore found her decision not to pursue an investigation of this incredible story, but rather to continue with the same strategy as the first trial—which had resulted in a hung jury—to be reasonable, and not deficient performance. As a result, the court rejected Harris’s ineffective assistance claim.

Harris’s second claim, that the circuit court erred in admitting H.W.’s testimony from the first trial, was also rejected. The court observed that the State attempted to find and arrest H.W. under a material witness warrant prior to his being deemed unavailable. The court further noted that Harris had the opportunity to cross-examine H.W. during the first trial. Therefore, the court found that the testimony was properly admitted under the hearsay exception relating to the unavailability of a witness who has previously testified, pursuant to WIS. STAT. § 908.045(1).

Harris’s third claim in his postconviction motion, that he had newly discovered evidence warranting a new trial, related to a statement from another inmate, Keeven Summerville. Summerville shared a cell with Flav, whose name is Christopher Hendon, at the end of 2019. Summerville claimed that Hendon admitted to him that Harris was “locked up” for something Hendon had done; namely, shooting and killing a girl who had stolen from him. Summerville further claimed that Hendon told him that “he (Hendon) paid ‘some dude and his baby’s momma’ in money and drugs to tell the investigators that they saw Harris shoot and kill the victim.” Summerville also testified at the postconviction hearing.

The circuit court found Summerville’s testimony—both in his affidavit and on the witness stand—to be incredible. The court observed that Hendon confessing “numerous felonies” to Summerville, without corroboration, was a “preposterous” story that was “unworthy of belief.” The court therefore rejected Harris’s newly discovered evidence claim.

As a result, the circuit court denied Harris’s postconviction motion. This no-merit appeal follows.

IV. No-Merit Report

The no-merit report discusses pretrial proceedings, both jury trials, both sentencings, and the postconviction motion. First, with regard to pretrial matters, the no-merit report in particular addresses the State’s motion to admit other-acts evidence. Specifically, the State sought to introduce evidence that the residence where Rodriguez was shot was a drug house, and that Harris was usually in possession of firearms. The State argued that this provided context for the case, as well as an explanation as to why the witnesses to the shooting had initially lied to police—out of fear of Harris.

The circuit court found that this all related to the context of the case and was therefore admissible. As appellate counsel notes, other-acts evidence is admissible if it “furnishes part of the context of the crime or is necessary to a full presentation of the case.” *State v. Schillcutt*, 116 Wis. 2d 227, 236, 341 N.W.2d 716 (Ct. App. 1983), *aff’d*, 119 Wis. 2d 788, 350 N.W.2d 686 (1984) (citation modified). We agree with counsel’s assessment that there would be no arguable merit to challenging the admission of this evidence.

The no-merit report also specifically addresses an issue that arose during voir dire at Harris’s first trial. One of the jurors, Juror 30, noted that Harris was a convicted felon and was “caught with a weapon on him.” The State explained that this charge was an allegation that had not yet been proven. Nevertheless, the circuit court struck Juror 30 for cause.

Harris’s trial counsel moved to strike the entire jury panel, arguing that it had been tainted by Juror 30’s comment. However, the circuit court found that the State had “ben[t] over backwards” to make it clear that Harris’s possession of a firearm was, at that point, only an allegation that had not yet been proven. The court further noted that the exchange with Juror 30 lasted for less than a minute, and there were no follow-up comments made by any other jurors relating to Juror 30’s comment. The court therefore determined that the remainder of the panel had not been “poisoned.”

In other words, the circuit court found that the rest of the prospective jurors had not displayed any subjective bias as a result of Juror 30’s comment. Subjective bias is generally revealed through a juror’s demeanor, and “the circuit court sits in a superior position to assess the demeanor and disposition of prospective jurors, and thus, whether they are subjectively biased.” *State v. Faucher*, 227 Wis. 2d 700, 718, 596 N.W.2d 770 (1999). Therefore, “[i]n

most cases a circuit court’s discretion in determining the potential for [subjective] juror impartiality or bias will suffice to protect a defendant’s right to an impartial jury.” *Id.* (citation omitted; brackets in *Faucher*). Based on the circuit court’s findings relating to the exchange with Juror 30 and Harris’s subsequent motion to strike the panel, we agree with appellate counsel’s conclusion that there would be no arguable merit to a challenge relating to the jury panel in the first trial.

The no-merit report also discusses the sufficiency of the evidence, detailing the evidence presented by the State at both trials. The report sets 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 sufficiency of the evidence supporting Harris’s convictions.

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. At the sentencing for the felon in possession of a firearm count, in which the court imposed the maximum term of imprisonment plus a \$5,000 fine, the court noted Harris’s “stunningly atrocious” criminal record of 12 prior convictions, opining that Harris “needs every bit of punishment that this [c]ourt can hand down.” The court also imposed the maximum sentence for the first-degree reckless homicide count, noting that Harris had “opportunity after opportunity to turn things around” but instead chose to “continue to engage in criminal conduct.”

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, while at the statutory maximums for both offenses, are nevertheless 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.

The no-merit report then addresses the circuit court’s decision denying Harris’s postconviction motion. With regard to Harris’s first claim, that counsel was ineffective for failing to investigate the purported booking room confession by J.T., the circuit court found Attorney Roth’s testimony at the postconviction hearing credible and her trial strategy reasonable. The court’s findings of fact, which include “‘the circumstances of the case and the counsel’s conduct and strategy,’” will not be disturbed unless they are clearly erroneous. **State v. Thiel**, 2003 WI 111, ¶21, 264 Wis. 2d 571, 665 N.W.2d 305 (citation omitted). We further note that counsel’s decisions relating to trial strategy are given “great deference” when analyzing an ineffective assistance claim. **State v. Balliette**, 2011 WI 79, ¶26, 336 Wis. 2d 358, 805 N.W.2d 334. Based on the record, we agree with appellate counsel that there would be no arguable merit to challenging this determination by the circuit court.

Harris’s second claim in his postconviction motion was that the circuit court erred in admitting H.W.’s testimony from the first trial. The testimony was admitted after finding that H.W. was unavailable to testify at the second trial when he did not appear pursuant to his subpoena, and the police were unable to locate him. Harris argued that his right to confrontation was violated because he was unable to cross-examine H.W. during the second trial. However, Harris had the opportunity to cross-examine H.W. during the first trial. See **State v. Hale**, 2005 WI 7, ¶54, 277 Wis. 2d 593, 691 N.W.2d 637 (explaining that proffered testimony from a

previous hearing satisfies the requirements of the Confrontation Clause if (1) the declarant is unavailable; and (2) the defendant had a prior opportunity for cross-examination). Indeed, the circuit court pointed out in its postconviction decision that this “is always the case” when testimony is admitted under this hearsay exception, and to disallow the testimony based on Harris’s argument would be to “repudiate this hearsay exception entirely.” We therefore agree with appellate counsel that there would be no arguable merit to a challenge of the circuit court’s rejection of Harris’s postconviction claim that admitting H.W.’s previous testimony was error.

Harris’s third postconviction claim sought to admit as newly discovered evidence the statement by Summerville that Flav had confessed to killing Rodriguez. To succeed on such a claim, the defendant must first prove that “(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.” *State v. Plude*, 2008 WI 58, ¶32, 310 Wis. 2d 28, 750 N.W.2d 42 (citation omitted).

Even if these four criteria are established, it must then be determined by the circuit court “whether a reasonable probability exists that had the jury heard the newly-discovered evidence, it would have had a reasonable doubt as to the defendant’s guilt.” *Id.* In making this determination, the circuit court may base its decision on the credibility of the testimony, which is “crucial” in applying this standard. See *State v. Carnemolla*, 229 Wis. 2d 648, 660, 600 N.W.2d 236 (Ct. App. 1999) (citation omitted). Here, the circuit court found that Summerville’s testimony was “completely incredible,” which this court has previously determined is “the equivalent of finding that there is no reasonable probability of a different outcome on retrial.” *Id.* at 661. Based on the record, we agree with appellate counsel’s assessment that a challenge to the circuit court’s rejection of this claim also lacks arguable merit.

V. Harris's Response

Thus, we turn to Harris's response to the no-merit report. Harris raises a number of issues in his response, several of which we have already discussed. For example, he first challenges the circuit court's determination regarding Juror 30's comment during voir dire, which we have already concluded lacks arguable merit.

Harris also presents a lengthy argument relating to J.T.'s alleged booking room confession to being paid off for her testimony, and his postconviction claim that his trial counsel was ineffective in handling this allegation. He also again raises his claim of newly discovered evidence as proffered by Summerville. We have already addressed these issues, as argued in Harris's postconviction motion and discussed above, and found them to be without arguable merit.

Additionally, Harris raises a number of issues relating to the evidence. His first argument relates to his attempt to admit a letter he claimed he sent his sister in May 2018, the month after Rodriguez was shot. In the letter, Harris apparently diverted blame for the shooting away from himself. Harris's trial counsel, who found out about the letter after the second day of trial, sought to admit it as a prior consistent statement, in conjunction with Harris's testimony, by calling Harris's sister as a witness.

The circuit court did not allow the admission of the letter, characterizing it as a "stunt" and "trial by ambush." The court observed that this "allegedly exculpatory evidence" did not come to counsel's attention until after the State had rested. Furthermore, Harris's sister had attended the trial since it began, since she was not on the defense's witness list, and thus the court noted that calling her would violate its witness sequestration order.

The circuit court has “broad discretion to admit or exclude evidence and to control the order and presentation of evidence at trial,” and we will upset those decisions “only where [the circuit court] ha[s] erroneously exercised that discretion.” *State v. James*, 2005 WI App 188, ¶8, 285 Wis. 2d 783, 703 N.W.2d 727. Based on the circuit court’s findings regarding the letter, we conclude that there would be no arguably meritorious challenge to the court’s decision not to admit it.

Next, Harris raises an issue regarding the execution of a search warrant on the drug house. Police initially searched the house after Harris was arrested; however, upon interviewing the witnesses who stated that Rodriguez was shot in the kitchen, the police executed a second search warrant in which they discovered blood in the kitchen which was determined to be Rodriguez’s. After the first search, police had boarded the door of the house, but it was broken into prior to the second search. Harris argues that, as a result, the evidence collected during the second search was not “credible” because it was “contaminated” from the break-in.

Harris filed a pro se motion to suppress this evidence, which he would not permit his trial counsel to withdraw, although counsel stated she believed it lacked merit. The circuit court determined that suppression was not a remedy under these circumstances, because the police do not have an obligation to keep a crime scene secure. Rather, the jury could consider the potential for crime scene contamination when considering the weight of the evidence. Indeed, the jury heard testimony that the house was ransacked prior to the police performing the second search. There would be no arguable merit to a challenge of this evidence.

Another evidentiary issue raised by Harris relates to the testimony of the medical examiner regarding the trajectory of Rodriguez’s gunshot wounds. Specifically, the medical

examiner noted a “slightly downward angle” to both wounds. Harris argues that this demonstrates he was not the shooter, because Rodriguez was several inches taller than him. Harris’s trial counsel addressed this during her cross-examination of the medical examiner, as well as discussing the issue during closing arguments. It is for the jury to “resolve any conflicts or inconsistencies in the evidence[.]” *State v. Perkins*, 2004 WI App 213, ¶15, 277 Wis. 2d 243, 689 N.W.2d 684. We conclude there is no issue of arguable merit relating to this evidence.

Harris also raises issues relating to the credibility of the witnesses who testified against him. He renews credibility questions about J.T., given the alleged pay off for her testimony. He also observes that H.W. and M.D. were given immunity for their testimony in the first trial. However, the record reflects that the jury was informed of those immunity deals, and heard about all of the witnesses’ drug abuse issues, including their drug use on the day of the shooting.

Harris also raises credibility questions regarding J.G., the neighbor who told police that Rodriguez frequented the drug house. The jury heard that J.G. was initially arrested shortly after the shooting after he gave conflicting stories to police, and was “very interested” in their recovery of Rodriguez’s body to the point of being “suspicious.” As stated above, it is fully up to the jury to determine and weigh the credibility of witnesses, *see Poellinger*, 153 Wis. 2d at 503, which includes “resolv[ing] any conflicts or inconsistencies in the evidence,” *see Perkins*, 277 Wis. 2d 243, ¶15.

Indeed, all of these witnesses were all subject to cross-examination by Harris’s trial counsel, who addressed the credibility issues involved with each witness. The record reveals no issues of arguable merit relating to their testimony.

Relatedly, Harris argues that the prosecutor “lied” to the jury during the closing arguments at the second trial regarding these immunity deals. On the contrary, as noted above, the record is clear that the immunity deals were fully explained to the jury.

Finally, Harris argues that it was a due process violation and “unfair prejudice” to admit the gun that was recovered during the search of the drug house. However, Harris does not develop this argument or provide any legal authority to support the allegations, and we generally decline to consider such inadequate arguments. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Furthermore, we note that the parties entered into a stipulation, which was read to the jury, that the gun admitted into evidence was not the weapon that killed Rodriguez.

Therefore, we conclude that Harris has raised no issues of arguable merit in his response. 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 Harris further in this appeal.

Therefore,

IT IS ORDERED that the judgments and order are summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kachelski is relieved of further representation of Harris 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