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**DISTRICT III**

June 11, 2024

To:

Hon. Kelly J. Thimm  
Circuit Court Judge  
Electronic Notice

Sandra Paitl  
Clerk of Circuit Court  
Ashland County Courthouse  
Electronic Notice

Andrew Hinkel  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Eugene Junior Stumbaugh  
Waupun Correctional Inst.  
P.O. Box 351  
Waupun, WI 53963-0351

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

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2022AP1859-CRNM      State of Wisconsin v. Eugene Junior Stumbaugh  
(L. C. No. 2018CF163)

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 Eugene Stumbaugh filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),<sup>1</sup> concluding that no grounds exist to challenge Stumbaugh's convictions for attempted first-degree intentional homicide, as an act of domestic abuse and as a domestic abuse repeater; arson of a building; and two counts of misdemeanor bail jumping. Stumbaugh was informed of his right to file a response to the no-merit report, and he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738

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

(1967), we conclude 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.

According to the complaint, Stumbaugh had been arrested for disorderly conduct, as a domestic abuse incident, at the home of his former girlfriend, Susan.<sup>2</sup> Two days later, Stumbaugh returned to Susan's home, poured gasoline around the bed on which Susan was sleeping, and ignited the gasoline with a lighter. Stumbaugh told police that he also held a burning pillow on the back of Susan's head. During pretrial proceedings, the circuit court granted defense counsel's request for a competency examination. An examining psychologist submitted a report opining that Stumbaugh was competent to stand trial. Although Stumbaugh sought an alternative examination, he was unable to secure one, and he eventually stipulated to his competency.

Stumbaugh moved the circuit court for a change of venue. Included with his motion were several attachments documenting news coverage of the events leading to the charges against him. After considering factors relevant to a change-of-venue request, the court denied the motion. It noted that the attached news reports were from more than one year prior to the change-of-venue hearing; it did not find the reports especially inflammatory; and the stories about Stumbaugh comprised only a small part of regional media coverage. The court also stated that at voir dire, it

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

would become clear whether news coverage was so pervasive as to make it impossible to select an impartial jury.<sup>3</sup>

Stumbaugh pleaded not guilty and not guilty by reason of mental disease or defect (“NGI”). An evaluating psychologist opined that although there was evidence to support a conclusion that Stumbaugh suffered from a mental disease or defect, Stumbaugh did not lack the substantial capacity to either appreciate the wrongfulness of his alleged misconduct or conform his conduct to the requirements of the law as a result of his mental disease or defect. The psychologist noted, among other things, that Stumbaugh was heavily intoxicated during the events leading to the present charges.

Because Stumbaugh entered pleas of both not guilty and NGI, the trial was bifurcated into two phases: the guilt phase and the responsibility phase. *See State v. Fugere*, 2019 WI 33, ¶26, 386 Wis. 2d 76, 924 N.W.2d 469. The jury found Stumbaugh guilty on all counts in the first phase. When Stumbaugh’s counsel informed the circuit court that he would not be presenting any evidence and when Stumbaugh waived his right to testify at the responsibility phase, the court directed a verdict against Stumbaugh, concluding that there had been no evidence presented of a mental disease or defect. At sentencing, out of a maximum possible sentence of 103.5 years, the court imposed consecutive sentences totaling eighty-six and one-half years, consisting of sixty-six and one-half years of initial confinement followed by twenty years of extended supervision.

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<sup>3</sup> During voir dire, only a handful of potential jurors said they had heard about the case in the media, and all but one stated that they could disregard what they had previously learned. The potential juror who believed he could not set aside what he had learned was dismissed for cause.

Any challenge to the jury's verdicts would lack arguable merit. When reviewing the sufficiency of the evidence, we must view the evidence in the light most favorable to sustaining a jury's verdict. See *State v. Wilson*, 180 Wis. 2d 414, 424, 509 N.W.2d 128 (Ct. App. 1993). At trial, Ashland police officer Jonathan Kroll testified that on July 5, 2018, he was dispatched to Susan's home and that he arrested Stumbaugh for "domestic disorderly conduct." The Ashland County criminal clerk testified that on the day after his arrest, Stumbaugh appeared for a bond hearing at which Stumbaugh agreed to conditions of his bond, including that he not commit any new crimes, that he have no contact with Susan, and that he remain more than 500 feet from her residence.

Ashland police officer Michelle Tutor testified that on July 7, 2018, she was driving by Susan's house at approximately 1:00 a.m., and she noticed fire in a window. Tutor reported the fire to dispatch, and as she parked her car, she observed Susan exiting the home. According to Tutor, Susan's "face was black, her hair was singed, and she was trying her best to maintain her balance." When Tutor asked Susan what happened, she responded: "[Stumbaugh] was there. He told me he was going to do it and he did it."

Ashland police lieutenant Scott Morland testified that he was dispatched to the police department to interview Stumbaugh after he had turned himself in. After advising Stumbaugh of his *Miranda*<sup>4</sup> rights, Stumbaugh agreed to speak to Morland. The interview was both video and audio recorded, and the video recording was played for the jury. During the interview,

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<sup>4</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

Stumbaugh stated that he threw gasoline on the bed, lit a pillow—which “flamed up”—and put the pillow on the back of Susan’s head.

Susan testified that she dated Stumbaugh for a “couple months” before she attempted to end the relationship. According to Susan, Stumbaugh had threatened to burn her house down with her in it. Susan further testified that in the early morning hours of July 7, 2018, she woke up to heat and saw a fire. Susan continued:

And I tried to put it out with my right hand, but it wouldn’t go out and I totally fully woke up. At that point, the flames were getting bigger and I [saw Stumbaugh] at the foot of my bed and he kept pushing me in the fire and then he grabbed a pillow—I don’t know where he got the pillow, but ... it was on fire and he brushed it in my face and around the back of my neck (indicating), and he said: “Die, bitch.”

After engaging Stumbaugh in an on-the-record colloquy, informing him of both his right to testify and his right to not testify, Stumbaugh confirmed he was waiving his right to testify.

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 the jury’s guilty verdicts.

The no-merit report addresses whether there is any arguable merit to challenge the circuit court’s competency determination, the denial of Stumbaugh’s motion for a change of venue, or the sentences imposed. The no-merit report also addresses a number of trial-related issues,

including whether the jury was properly constituted; whether the court erred by directing a verdict against Stumbaugh in the mental responsibility phase; whether there are any grounds to challenge the court's evidentiary rulings; and whether Stumbaugh is entitled to any additional sentence credit.

Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that none of these issues has arguable merit. The no-merit report sets forth an adequate discussion of these potential issues to support the no-merit conclusion, and we need not address them further.

Our independent review of the record discloses no other potential issue for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Andrew Hinkel is relieved of his obligation to further represent Eugene Stumbaugh in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*