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**DISTRICT II**

February 26, 2025

To:

Hon. Laura F. Lau  
Circuit Court Judge  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Monica Paz  
Clerk of Circuit Court  
Waukesha County Courthouse  
Electronic Notice

Luz Maria Pablo Cruz  
4328 W. Anthony Dr.  
Milwaukee, WI 53219

Annice Kelly  
Electronic Notice

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

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2023AP835-CRNM      State of Wisconsin v. Luz Maria Pablo Cruz  
(L.C. #2019CF918)

Before Neubauer, Grogan and Lazar, 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).**

Luz Maria Pablo Cruz appeals a judgment of conviction for attempting to flee or elude an officer and for operating a vehicle without a license (third or subsequent offense within three years). Her appointed appellate counsel, Annice Kelly, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Cruz filed a response, and counsel filed a letter, which we construe as a supplemental no-merit report. Upon

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

consideration of the no-merit report, the response, the supplemental no-merit report, and an independent review of the Record as mandated by *Anders*, we conclude that no arguably meritorious issues exist for an appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

The State charged Cruz with one count of attempting to flee or elude an officer and one count of operating without a license (third or subsequent offense within three years). The charges stemmed from an incident where Cruz failed to stop at a stop sign and then quickly accelerated away from the officer who attempted to stop her. Cruz did not stop until she drove over a curb and crashed into a fire hydrant.

Cruz entered pleas of not guilty and not guilty by reason of mental disease or defect (NGI). The circuit court ordered her to be evaluated. Following the evaluation, Dr. Deborah Collins filed a report finding that Cruz had a mental disease or defect but that there was not sufficient support for the NGI plea.

The circuit court subsequently granted Cruz's request for a second evaluation, which was completed by Dr. Melissa Westendorf. Dr. Westendorf found that Cruz suffered from a mental disease or defect but, like Dr. Collins, concluded there was insufficient evidence that Cruz's criminal behavior was a result of her mental disease. Consequently, Dr. Westendorf found that the facts did not support Cruz's NGI plea. The court adopted Dr. Westendorf's findings and found that Cruz did not qualify under WIS. STAT. § 971.15.

Cruz later requested a third evaluation, which the circuit court granted. Dr. Neil Brahmhatt completed the evaluation and filed a report. He found that at the time Cruz attempted to flee or elude an officer, she was suffering from a severe mental disease or defect such that she lacked the substantial capacity to conform her conduct to the requirements of the

law. Dr. Brahmbhatt concluded that Cruz satisfied the standards required for an NGI plea as to the fleeing charge, but not as to the charge of operating without a license.

A bifurcated trial followed.<sup>2</sup> During Phase 1, the State called the officer who attempted to stop Cruz after seeing her driving erratically. The State also played the officer's squad cam video of the incident for the jury. In addition, the State introduced Cruz's certified driving record, which established that she did not have a valid license at the time of the incident. Cruz did not testify during this phase. The jury found her guilty of both counts.

During Phase 2, all three doctors who evaluated Cruz testified. Cruz also testified. Given that there was no evidence to support an NGI plea with regard to the charge of driving without a license, the circuit court directed a verdict as to that count.<sup>3</sup>

As to the count of attempting to flee or elude an officer, the jury unanimously concluded that Cruz had a mental disease or defect at the time of the incident. With the exception of one dissenting juror, the panel went on to find that Cruz did not lack substantial capacity either to

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<sup>2</sup> When an NGI plea is joined with a not guilty plea, a bifurcated criminal trial results, consisting of two phases: the guilt phase and the responsibility phase. See *State v. Magett*, 2014 WI 67, ¶33, 355 Wis. 2d 617, 850 N.W.2d 42.

<sup>3</sup> A directed verdict on the affirmative defense of lack of responsibility due to mental disease or defect is appropriate where, viewing the evidence in the light most favorable to the accused, there is "no credible probative evidence toward meeting the burden of establishing the defense of not guilty by reason of mental disease or defect by a preponderance of the evidence[.]" See *State v. Leach*, 124 Wis. 2d 648, 663, 370 N.W.2d 240 (1985).

appreciate the wrongfulness of the conduct or to conform that conduct to the requirements of law.<sup>4</sup>

For the fleeing charge, the circuit court withheld sentencing Cruz and ordered her to serve two years of probation, which included sixty days of stayed conditional jail time. The court also ordered her to complete twenty-five hours of community service. For the operating-without-a-license-charge, the court ordered Cruz to pay a \$100 fine.

The no-merit report addresses the sufficiency of the evidence. We agree with counsel that there is no arguable merit to this issue. An appellate court will not overturn a conviction “unless the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The evidence at the bifurcated trial in this matter was sufficient to support the verdicts.

The no-merit report also addresses the circuit court’s exercise of its sentencing discretion. Again, we agree with counsel that there is no arguable merit to this issue. The court sentenced Cruz consistent with the requirements *State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197.

In her response,<sup>5</sup> Cruz asserts that she “did not have adequate counsel throughout the proceedings, and there were several instances where the interpreters were difficult to

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<sup>4</sup> The responsibility phase, though part of a criminal trial, shares traits with a civil trial, where only a five-sixths verdict is required. See *State v. Lagrone*, 2016 WI 26, ¶¶33-34, 368 Wis. 2d 1, 878 N.W.2d 636; see also WIS. STAT. § 971.165(2).

understand.” In the supplemental no-merit report, counsel advises that Cruz “never mentioned ... any dissatisfaction with her trial attorney nor did she state that she had difficulty understanding the interpreter.” Cruz does not make any specific concerns relating to trial counsel’s performance, and, having reviewed the Record, we see no basis on which to argue that he was ineffective.

As for Cruz’s difficulty understanding the interpreters, she does not explain what information she did not understand. Cruz was assisted by an interpreter throughout the circuit court proceedings. In the supplemental no-merit report, counsel highlights the numerous instances during both phases of the trial when interpreter issues were raised and addressed. Cruz confirmed more than once for the court that there were no issues with the interpretation process. A challenge on this basis would lack arguable merit.

Our review of the Record discloses no other potential issues for appeal.<sup>6</sup>

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

IT IS FURTHER ORDERED that Attorney Annice Kelly is relieved from further representing Luz Maria Pablo Cruz in this appeal. *See* WIS. STAT. RULE 809.32(3).

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<sup>5</sup> The response was purportedly drafted and translated by Cruz’s sister.

<sup>6</sup> It is not clear from the Record whether Cruz can read English. Before terminating representation, we trust appellate counsel will make sure that Cruz receives a translated copy of the opinion, if necessary, or take other steps to ensure that Cruz understands it.

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*