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DISTRICT II

June 18, 2025

To:

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Circuit Court Judge
Electronic Notice

Desiree Bongers
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Megan Elizabeth Lyneis
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Andrew Clark #341693
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You are hereby notified that the Court has entered the following opinion and order:

2023AP2355-CRNM State of Wisconsin v. Andrew Clark (L.C. #2020CF666)

Before Gundrum, P.J., 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).

Andrew Clark appeals a judgment of conviction for two counts of first-degree intentional homicide, one of which included a domestic abuse surcharge under WIS. STAT. § 973.055(1), and a single count of attempted mutilation of a corpse. Clark's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). Clark has filed a response, as well as what we construe as a supplemental

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

response.² Based upon our review of the no-merit report, the response and the supplemental response, and following an independent review of the appellate record as mandated by *Anders*, we conclude that there is no non-frivolous issue that could be raised on appeal. Accordingly, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21(1).

Clark was charged with the crimes of conviction and proceeded to a jury trial. In short, the trial testimony established that on the morning of October 21, 2020, authorities had been dispatched to Clark's residence after Clark reported a fire. The interior of the home was a smoky haze, with the smell of gasoline throughout the residence and piles of burned rags in the bathroom. In the first room, officers saw a deceased male, later identified as Lavar Wallace, with four gunshot wounds, three to the head and one to the chest. They found Clark in a bedroom, kneeling beside the body of Melissa Matz, his wife, who had suffered a gunshot wound to the chest. Clark told investigators that he came home and found the bodies and that he believed that someone had broken into the home.

² On July 8, 2024, Clark wrote a pro se letter to this court raising concerns about access to his client file, which he claimed he needed to respond to the no-merit report filed by his appointed appellate counsel. By order dated August 6, 2024, we found good cause to extend the deadline for filing the response. We denied his request to order the production of his client file, noting that he was entitled by statute only to copies of the transcripts and the circuit court case record, and we requested that appointed appellate counsel provide Clark with those items if she had not done so already.

The following day, this court received correspondence from appointed appellate counsel extensively chronicling her efforts to provide not only the court record and transcripts, but also discovery from Clark's prior counsel. Based on counsel's response, it appears that all materials necessary for Clark to prepare his response had been previously provided, and Clark in fact filed his response to the no-merit report on September 20, 2024.

On December 6, 2024, Clark again filed a pro se motion to access his client file. The motion does not allege that any items that should have been provided to him were missing. Rather, Clark appears to argue that his trial counsel should be required to testify at a hearing pursuant to *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979). Our no-merit responsibilities include discerning any potentially meritorious claim regarding ineffective assistance of trial counsel. We therefore construe the motion as a supplemental response and consider it as part of these no-merit proceedings.

The State's key witness at trial was a relative of Clark's, Michael Draine. Draine testified that on the evening of October 20, he had accompanied Clark, Matz, and Wallace to a strip club. They left the club and went back to the residence after Clark became belligerent. On the ride back, Clark and Matz argued about money. Back at the residence, Clark and Matz continued their argument in the bedroom while Draine and Wallace played video games in the living room. Draine testified he heard a gunshot from the bedroom and he and Wallace went to see what had happened. He observed Matz on the floor unresponsive and Clark standing over her with a gun.

Clark instructed Draine and Wallace not to call the police. He told them to go sit down while he attempted to conceal the body in some bags. In the ensuing hours, Clark gave Draine several explanations for Matz's death, including that she had killed herself, that she had made Clark shoot her, and that it was an accident.

As Draine and Wallace waited, Wallace started panicking and wanted to call 911. Clark took Draine outside the residence and told him to shoot Wallace, which Draine refused to do. Draine testified that Clark then re-entered the residence and shot Wallace a single time. Draine believed that Wallace was still alive after the initial shot. Clark, too, thought Wallace was still alive, and he fired additional shots into Wallace's head. At some point, Clark brought a gas can into the residence and poured it over the bodies and around the house.³

³ Draine was not sure at what point in the sequence of events Clark retrieved the gas can, but the can had blood spatter on it, suggesting it was present in the living room during one or more of the shots fired at Wallace.

Clark told Draine to accompany him to a contract job cleaning a bar in an attempt to establish an alibi. They cleaned the bar and then returned to the residence.⁴ Clark then packed a backpack, gave it to Draine, and dropped Draine off at a hotel. Draine testified that he had never handled the gun used in the shootings and that he had “ditch[ed]” the backpack soon after he got to the hotel.

Eyewitness testimony and surveillance video from various businesses generally supported Draine’s testimony and established a timeline for the events of October 21. Surveillance video showed Clark, Matz, Wallace, and Draine leave the strip club shortly before midnight. At approximately 3:45 a.m., Clark and Draine were observed on surveillance video cleaning at the bar. They left the bar at 4:55 a.m.; at 5:10 a.m., an eyewitness observed Clark’s vehicle cautiously proceed toward his residence and pull into the driveway. Draine was seen on surveillance footage at the hotel at about 6:50 a.m., and Clark was observed on surveillance video at a BP gas station pump between 7:08 a.m. and 7:15 a.m. Clark placed the 911 call from his residence at about 7:30 a.m.

There was also significant physical evidence that corroborated Draine’s account. At the residence, police discovered a partially burned candle they believed had been placed near gas-soaked rags in the bathroom in an attempt to start the house on fire. Two bullet casings were found in the living room and a single bullet casing was found in the bedroom. Two spent shell casings were recovered from the garbage near where Clark was seen at the BP gas station. The

⁴ Draine was not certain whether Clark fired the additional shots at Wallace before they left for the cleaning job or after they returned from it.

casings were wrapped in black latex gloves that were similar in appearance to gloves law enforcement saw at the residence.

Draine led police to a backpack near the hotel that contained a Hi-Point 40-caliber pistol and over \$3,000. The Wisconsin State Crime Laboratory concluded the bullet casings found at the residence and at the BP station had been fired in the Hi-Point pistol. DNA testing revealed strong support that Clark's DNA was present in the DNA mixture found on the casings and the gloves from the BP station.⁵ There was strong support for the conclusion that Clark's DNA was present on the gun, whereas there was no support for inclusion when the gun samples were compared with Draine's DNA.

Pretrial, the circuit court granted all material motions in limine filed by Clark and granted his motion to present evidence that Draine was responsible for the murders. *See State v. Denny*, 120 Wis. 2d 614, 624, 357 N.W.2d 12 (Ct. App. 1984) ("Thus, as long as motive and opportunity have been shown and as long as there is also some evidence to directly connect a third person to the crime charged which is not remote in time, place or circumstances, the evidence should be admissible."). Based on the foregoing and other evidence, the jury convicted Clark of all crimes. He was sentenced to two life terms without extended supervision, concurrent to one another but consecutive to a four-year sentence for attempted mutilation of a corpse.

The no-merit report concludes there is no non-frivolous basis to challenge the sufficiency of the evidence, the evidentiary and other objections interposed at trial, and the circuit court's exercise of its sentencing discretion. Our review of the appellate record satisfies us that the

⁵ DNA consistent with Draine's profile was also found on one of the gloves.

no-merit report sufficiently analyzes these issues and properly concludes that any challenge based upon them would lack arguable merit. Our review of the appellate record discloses no other potentially meritorious issues for appeal.

Clark's response to the no-merit report generally attempts to relitigate the jury trial. He presents a number of "claims," through them chronicling his version of events, arguing law enforcement violated his Fourth Amendment rights when entering his home following his 911 call, criticizing the performance of his trial attorney, and attempting to raise many other matters. Clark's theory of defense in his no-merit response is that he shot Matz accidentally after she pulled the gun on him. Clark explains that he and Draine then left to clean the bar, and they returned to the residence to find that an unidentified assailant had murdered Wallace for unexplained reasons.

Suffice it to say that, having reviewed the complete appellate record including all of the trial evidence presented, none of Clark's dozen or so arguments appear to have any non-frivolous basis. We highlight in particular that an appellate court may not reverse a conviction unless the evidence, viewed most favorably to the State and to 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 presented at trial, including that chronicled above, was more than sufficient to convict Clark of the double homicide and attempted mutilation of a corpse.

Clark also complains that certain money seized during the criminal investigation has not been returned to him. A person claiming the right to possession of property seized may apply to

the circuit court for its return. WIS. STAT. § 968.20(1). While it appears the circuit court began holding proceedings relating to the return of any of Clark’s asserted possessions, it is unclear when or whether those proceedings concluded. In any event, proceedings under § 968.20 are in the nature of an in rem action and are separate from the conviction and sentence that are the subject of these no-merit proceedings. See *In re Return of Prop. in State v. Glass*, 2001 WI 61, ¶15, 243 Wis. 2d 636, 628 N.W.2d 343. Any order governing the return of seized property—even if erroneous—presents no non-frivolous issues regarding the validity of Clark’s conviction and sentence. As relevant here, the restitution and costs ordered as part of the judgment appears to comply with the applicable law, including WIS. STAT. § 973.20.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. See WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Megan Elizabeth Lyneis is relieved of responsibility for further representing Andrew Clark in this appeal. 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