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DISTRICT I

August 12, 2025

To:

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Circuit Court Judge
Electronic Notice

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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Anne Christenson Murphy
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1060-CR

State of Wisconsin v. Demarius Cage (L.C. # 2016CF2971)

Before White, C.J., Colón, P.J., and Geenen, J.

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).

Demarius Cage appeals his judgment of conviction for first-degree intentional homicide as a party to a crime; hiding a corpse as a party to a crime; possession of a firearm by a felon; possession of heroin with the intent to deliver; and possession of THC with the intent to deliver. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We summarily affirm.

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

Cage was convicted in the death of T.H., whose decomposing body was discovered in a duct-taped garbage cart on June 11, 2016. The medical examiner determined that T.H. died of a gunshot wound to the head.

The police contacted T.H.'s brother and sister, who stated that T.H. had come to Milwaukee from Georgia to meet someone from California who owed him money. After reviewing T.H.'s cell phone records, officers found the last contact was on June 6, 2016, to a number with a California area code ending in 7333. That phone number was associated with Cage from an unrelated case. The records for that 7333 phone indicated that it was in the same area as the garbage cart on June 7, 2016. There was also a phone number for someone in Atlanta that appeared in both that phone and T.H.'s phone.

Based on the SKU number of the garbage cart, the police determined that it was purchased at a Home Depot on North Port Washington Road on June 6, 2016. Officers reviewed surveillance video from the store showing several individuals purchasing the cart along with bleach, rubber gloves, duct tape, towels, mop accessories, and an automotive jack. The video showed these individuals leaving the store in a silver Chevrolet Traverse. That vehicle was traced to Malena McGee, whose boyfriend, Kenyatta Maclin, admitted that Cage was his drug dealer. Maclin told police that he had driven Cage to Home Depot on June 6, 2016, where Cage purchased the garbage cart and other items.

Police located T.H.'s vehicle on June 21, 2016. It had marks on it consistent with being lifted with a jack.

Officers arrested Cage at a residence on North 39th Street in Milwaukee, where Cage stated he was "kinda" living. They found an empty bottle of bleach consistent with the type that

was purchased at Home Depot. They also found a broken phone, which turned out to be the 7333 phone that had contact with T.H. before he died. Maclin's phone records also showed contact with that phone. Cage denied knowing T.H. or Maclin. He also denied being at Home Depot and making any purchases.

Also discovered in the search of Cage's residence were large amounts of heroin and marijuana consistent with dealing, a digital scale, plastic baggies, and \$17,600 in cash. Additionally, officers recovered a .380 caliber firearm, which was owned by the mother of Cage's child. She stated that she had purchased it with Cage's assistance on June 8, 2016.

Cage was charged with first-degree intentional homicide as a party to a crime; hiding a corpse as a party to a crime; possession of a firearm by a felon; possession of heroin with the intent to deliver; and possession of THC with the intent to deliver. Cage moved to sever the drug charges and the firearm charge from the homicide charge.² He argued that the evidence of a drug connection between him and T.H. was "weak," and that the risk of prejudice outweighed the public interest in conducting a joint trial because trying the "unrelated" drug charges "would lead the jury to make an impermissible character determination" against him. Cage further asserted that the firearm charge was not related to the homicide because the firearm found in the search of his residence could not have been the gun used to kill T.H., since it was purchased after June 6, the presumed date of his death.

² Cage did not move to sever the charge of hiding a corpse, and he concedes that count was properly tried with the homicide charge.

The State opposed severance, arguing that joinder of the charges was proper because the drug charges were a result of the homicide investigation. The State presented evidence that Cage had engaged in drug-related internet searches, including “drug busts” in Georgia, where T.H. was from, suggesting a connection between the men that revolved around drug-dealing—a possible motive for killing T.H. Additionally, the State noted that Cage’s fingerprints had been found on a metal plate in a wall where some marijuana was found. This more definitively connected Cage to that residence, where the broken 7333 phone was found. The State further theorized that Cage’s “sudden interest” in buying a gun shortly after T.H. was killed was likely to replace the gun he had used to kill T.H. and then discarded.

After a hearing on the motion, the trial court denied the motion for severance.³ The court found that the charges against Cage were all based on “a rather intertwined set of circumstances,” and it was therefore proper to try them together for purposes of judicial economy. The court further found that the evidence relating to the drug and firearm charges was not unfairly prejudicial, observing that “[a]ll evidence, as we know, is designed—whether it’s introduced from the State or the defense, it’s supposed to be prejudicial; otherwise, there’s no point even being in the case.”

The matter proceeded to trial, and a jury convicted Cage on all counts as charged. He was sentenced to life imprisonment without the possibility of extended supervision for the

³ The motion for severance was heard and decided by the Honorable David Borowski, and we refer to him as the trial court. We note that Cage’s trial and sentencing were before the Honorable Janet C. Protasiewicz.

homicide charge, and consecutive sentences totaling 48 1/2 years for the other charges. This appeal follows.

In his appeal, Cage argues that the trial court erred in denying his motion to sever the drug charges and the firearm charge from the homicide charge. The review of joinder on appeal is “a two-step process.” *State v. Locke*, 177 Wis. 2d 590, 596, 502 N.W.2d 891 (Ct. App. 1993). The issue of whether the initial joinder was proper is a question of law that we review de novo. *Id.* We then turn to the motion for severance, which is “addressed to the trial court’s discretion.” *Id.* at 597.

In this case, Cage concedes that the initial joinder of the charges was proper. Instead, his argument focuses on the trial court’s discretionary decision denying his motion to sever the charges. “When a motion for severance is made, the trial court must determine what, if any, prejudice would result from a trial on the joined offenses. The court must then weigh this potential prejudice against the interests of the public in conducting a trial on the multiple counts.” *Id.* In “the balancing of these competing interests,” an erroneous exercise of discretion will not be found unless the defendant “can establish that failure to sever the counts caused ‘substantial prejudice.’” *Id.* (citation omitted).

“In evaluating the potential for prejudice ... when evidence of the counts sought to be severed would be admissible in separate trials, the risk of prejudice arising because of joinder is generally not significant.” *Id.* Thus, the court must consider whether such evidence would be

admissible as other-acts evidence under WIS. STAT. § 904.04(2)(a).⁴ See *Locke*, 177 Wis. 2d at 597. Under § 904.04(2)(a), the evidence cannot be used in order to “prove the character of a person in order to show that the person acted in conformity” with those other offenses, but can be offered for “other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

Cage argues that the trial court did not properly weigh “crucial facts” in its admissibility determination. Specifically, he asserts that the court failed to consider the lack of details in the evidence to connect the drug and firearm charges to the homicide. For example, Cage contends that while there was evidence that T.H. came to Milwaukee to collect a debt from Cage, there was no evidence that this was a drug-related debt, nor was there information about what they discussed in the contact between them prior to T.H.’s death.

However, the trial court found that the charges brought against Cage were based on “a rather intertwined set of circumstances.” This implies that there was a proper purpose for admitting evidence relating to the drug and firearm charges under WIS. STAT. § 904.04(2)(a), such as proof of motive. Furthermore, this evidence could be properly used to “establish the background relationship” between Cage and T.H., in order to “fully understand the context of the case.” See *State v. Shillcutt*, 116 Wis. 2d 227, 237, 341 N.W.2d 716 (Ct. App. 1983).

Also for purposes of determining admissibility, the trial court also had to consider “whether any prejudice resulting from such evidence outweighs its probative value.” See *Locke*,

⁴ The 2015-16 version of the Wisconsin Statutes would have been in effect at the time the motion to sever was decided; however, we observe that the current version of WIS. STAT. § 904.04(2)(a) is the same as the 2015-16 version.

177 Wis. 2d at 598. Cage argues that the trial court did not consider the “dangers” of proceeding to trial without severing the drug and firearm charges, as set forth in *State v. Bettinger*, 100 Wis. 2d 691, 696, 303 N.W.2d 585, *amended* 100 Wis. 2d 691, 305 N.W.2d 57 (1981). Such dangers include the potential for the jury to “consider that the defendant is a ‘bad person’ prone to criminal conduct,” or the possibility that the jury “will confuse the issues and will be incapable of separating the evidence.” *Id.*

However, the trial court here observed that a separate trial would involve “many of the same witnesses, same officers, same testimony, same evidence.” In particular, the court noted that the fingerprint evidence found in Cage’s house during the search that uncovered the drugs would have to be introduced in the homicide trial in order to connect Cage to the broken phone that contained T.H.’s last contact. With the likely admission of this evidence at the homicide trial, the risk of prejudice is diminished. *See Locke*, 177 Wis. 2d at 597. Furthermore, as the court noted, all evidence is prejudicial to some extent, or there would be “no point” to it being included in the case. Therefore, the court reasonably concluded that the risk of prejudice did not outweigh the probative value of the evidence.

Additionally, we note that Cage does not argue that the charges were not properly joined initially. This indicates that the charges were sufficiently “connected together” by factors such as “one charge aris[ing] out of the investigation of the other,” there being “common factors of substantial importance,” and that the crimes were “close in time.” *See State v. Salinas*, 2016 WI 44, ¶43, 369 Wis. 2d 9, 879 N.W.2d 609. Moreover, “[t]he purpose of joinder is to promote economy and efficiency in judicial administration and avoid multiple trials.” *Id.* In light of the circumstances and the evidence in this case, the trial court found that judicial economy weighed heavily against severance.

In sum, the trial court reasonably concluded that there was little, if any, risk of potential prejudice to Cage in trying the drug and firearm charges with the homicide, and that any risk did not outweigh the public's interests in avoiding multiple trials. *See Locke*, 177 Wis. 2d at 597. Therefore, we conclude that the court did not erroneously exercise its discretion in denying Cage's motion to sever. *See id.* Accordingly, we affirm.

For all the foregoing reasons,

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

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

Samuel A. Christensen
Clerk of Court of Appeals