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DISTRICT IV

November 22, 2023

To:

Hon. Daniel G. Wood
Circuit Court Judge
Electronic Notice

Jeffrey W. Jensen
Electronic Notice

Miranda Christensen
Clerk of Circuit Court
Adams County Courthouse
Electronic Notice

Kieran M. O'Day
Electronic Notice

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

2022AP1583-CR

State of Wisconsin v. James H. Siegert (L.C.# 2019CF120)

Before Kloppenburg, P.J., Blanchard, and Nashold, 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).

James Siegert appeals a judgment of conviction for first-degree reckless homicide by delivery of a controlled substance. He argues that the evidence was insufficient to support his conviction.¹ Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).² We affirm.

¹ Siegert was also convicted of additional charges that he does not challenge on appeal.

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

According to the complaint allegations, Siegert, the victim, the victim's brother, and a fourth individual drove together to Rockford to purchase an illegal substance. Siegert obtained the substance from his dealer and provided some of the substance to the victim. The dealer had previously provided Siegert with either heroin or fentanyl. During the drive back, the victim showed symptoms of an overdose after snorting some of the substance. She was dropped off at her home in Adams County and later found dead.

The case proceeded to a jury trial. The evidence included testimony that police found a white powdery substance near the victim's body that tested positive for fentanyl. The jury found Siegert guilty of first-degree reckless homicide by delivery of a controlled substance. We reference additional facts as needed below.

“The standard for reviewing the sufficiency of the evidence is highly deferential to a jury's verdict.” *State v. Beamon*, 2013 WI 47, ¶21, 347 Wis. 2d 559, 830 N.W.2d 681. “[A]n appellate court may not overturn a jury's verdict unless the evidence, viewed most favorably to sustaining 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.’” *Id.* (quoting *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990)).

As relevant here, the elements of first-degree reckless homicide by delivery of a controlled substance include: the defendant delivered a controlled substance to the victim, the victim used that substance, and the victim died as a result of the use of that substance. *See* WIS. STAT. § 940.02(2); WIS JI—CRIMINAL 1021. Siegert's arguments all relate to one or more of these elements.

Siegert first argues that the evidence was insufficient to establish that the substance he provided to the victim was the fentanyl found near her body. He argues that there was insufficient evidence to show that the substance he provided was fentanyl. He also argues that the victim's death occurred "many hours" later³ and that the victim had ample opportunity to obtain other substances in the interim. The State counters that there was sufficient evidence to show that the substance Siegert provided to the victim was the fentanyl that was found near her body. We agree with the State.

The victim's brother and the other individual who accompanied Siegert and the victim to Rockford both identified the substance that Siegert provided as fentanyl. The victim's brother testified that the substance "was a white substance so I'm assuming fent—fentanyl." The other individual testified that, based on his past experience, he had no doubt that the substance was fentanyl once he saw it. In addition, the jury heard an audio recording in which Siegert stated to police that the substance was supposed to be heroin but looked like fentanyl.

It was also reasonable for the jury to infer that the fentanyl that Siegert provided was the same fentanyl found near the victim's body. The fourth individual who accompanied Siegert, the victim, and her brother to Rockford testified that they did not stop to purchase drugs anywhere else during the trip. There was also evidence indicating that, once the victim was dropped off at home, she did not use her phone to facilitate the purchase of additional fentanyl, and no one else

³ There was evidence that over nine hours had passed between the time that the victim was dropped off at her house and the time of her death.

came to her residence before she was found dead. Siegert points to no evidence supporting his argument that the victim obtained fentanyl from somewhere else after she was dropped off.⁴

Siegert next argues that the evidence was insufficient to show that use of fentanyl was a substantial factor in causing the victim's death. He argues that there was no credible expert testimony on this topic and that, without such testimony, the jury could not reasonably infer that use of fentanyl was a substantial factor in causing the death. We disagree.

A forensic toxicologist testified that, although he was not providing an expert opinion on the cause of death, the victim's blood sample tested positive for fentanyl at a concentration that could be fatal. The county medical examiner testified that the cause of death was "acute drug fatality" and that "[t]here was no competing cause of death." Although the medical examiner did not explain the basis for her opinions, the opinions were consistent with the toxicologist's testimony and with evidence that the victim had overdosed on fentanyl. That evidence included testimony by a police officer describing drug paraphernalia found near the victim's body including a plastic wrapper with white residue, an aluminum foil "bundle,"⁵ a red straw with white powder, and a plate with a white substance on it. The officer also testified that there were brown and red substances found near the victim's body that he believed to be vomit and blood. That evidence included testimony that the white powdery substance near the victim's body tested positive for fentanyl.

⁴ The State asserts that the victim's brother testified that the victim did not have any fentanyl at home before they went to Rockford. We do not deem this testimony significant. According to the portion of the transcript the State cites, when the victim's brother was questioned as to whether the victim had any fentanyl at home before they went to Rockford, he testified, "Not that I know of but she wouldn't have told me anyway."

⁵ A "bundle" was described in the testimony as a wrapper or packaging that contains drugs.

In sum, the jury could reasonably infer from the evidence that Siegert provided the victim with fentanyl, that the victim used the fentanyl, and that her use of that fentanyl was a substantial factor in causing her death.

Therefore,

IT IS ORDERED that the circuit court's judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals