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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT IV**

September 9, 2014

To:

Hon. Scott L. Horne  
Circuit Court Judge  
La Crosse County Courthouse  
333 Vine Street  
La Crosse, WI 54601

Pamela Radtke  
Clerk of Circuit Court  
La Crosse County Courthouse  
333 Vine Street, Room 1200  
La Crosse, WI 54601

Tim Gruenke  
District Attorney  
333 Vine St. Rm. 1100  
La Crosse, WI 54601

Jeffrey W. Jensen  
735 W. Wisconsin Ave., 12th Fl.  
Milwaukee, WI 53233

Daniel J. O'Brien  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

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

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2013AP2188-CR

State of Wisconsin v. Izelia Golatt (L.C. # 2012CF164)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Izelia Golatt appeals a judgment convicting him of first-degree intentional homicide following a jury trial.<sup>1</sup> Golatt argues that the circuit court erroneously exercised its discretion by excluding evidence that the victim had a habit of staying out all night. Based upon our review of

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<sup>1</sup> Golatt also appeals an order denying his postconviction motion that claimed he was denied his right to a public trial. However, Golatt states in his brief that he is not raising that issue on appeal.

the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>2</sup> We summarily affirm.

The State charged Golatt with first-degree intentional homicide based on the apparent strangling death of a woman last seen in Golatt's company. Golatt pled not guilty, and developed a defense that the victim had died of a cocaine overdose with hypothermia rather than of strangulation. Prior to trial, Golatt moved to introduce evidence that the victim "at times did not return home at night, that she would call people in the early morning hours asking to be picked up at various places, and that sometimes she described these places as dangerous."

At a motion hearing, Golatt argued that the evidence showed the victim's pattern of staying out all night, seeking drugs, and then needing assistance to get away. The court denied Golatt's motion, determining that any probative value of that evidence was substantially outweighed by the danger of unfair prejudice and confusion of the issues. The court explained that the victim's general lifestyle was not at issue; rather, the issue was what occurred on the night of the victim's death. The court excluded the evidence, and Golatt was found guilty by the jury.

Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice [or] confusion of the issues." WIS. STAT. § 904.03. We review a circuit court's evidentiary ruling for an erroneous exercise of discretion. *State v. Payano*, 2009 WI 86, ¶40, 320 Wis. 2d 348, 768 N.W.2d 832. A circuit court has properly exercised its discretion if it "reviewed the relevant facts; applied a proper standard of law; and using a rational process, reached a reasonable conclusion." *Id.*, ¶41. Additionally, "[r]egardless of the

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

extent of the trial court's reasoning, we will uphold a discretionary decision if there are facts in the record which would support the trial court's decision had it fully exercised its discretion.”

*Id.*

Golatt argues that the circuit court failed to explain how the probative value of the evidence was substantially outweighed by the danger of unfair prejudice or confusion of the issues, and that no facts in the record support the circuit court's decision. Golatt contends that evidence that the victim tended to stay out all night was highly probative as to the severity of the victim's cocaine addiction, making it more likely that she died of a cocaine overdose.<sup>3</sup> He then argues that nothing in the record suggested that the evidence would be unfairly prejudicial, particularly in light of the fact that the jury would already be informed that the victim used cocaine. See *State v. Sullivan*, 216 Wis. 2d 768, 789-90, 576 N.W.2d 30 (1998) (evidence is unfairly prejudicial if it “has a tendency to influence the outcome by improper means or ... appeals to the jury's sympathies, arouses its sense of horror ... or otherwise causes a jury to base its decision on something other than the established propositions in the case”). Golatt also contends that, rather than confuse the issues, the evidence would have clarified the central issue at trial: whether the victim died of strangulation or a cocaine overdose. We disagree.

Assuming that the circuit court did not fully explain its determination that the probative value of the evidence was outweighed by the danger of unfair prejudice or confusing the issues, we nevertheless conclude that the record supports the court's evidentiary ruling as a proper

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<sup>3</sup> At trial, the State presented expert testimony that the victim died of strangulation. Golatt presented expert testimony that the victim died of a cocaine overdose. It was undisputed that the victim had a cocaine addiction and that she had used cocaine on the night of her death; the disputed issue was the actual cause of her death.

exercise of its discretion. First, the probative value of evidence that the victim tended to stay out all night was low. We will accept Golatt's argument that the evidence indicated the victim had a severe cocaine addiction; however, that evidence had only a marginal tendency to make it more likely than not that the victim actually died of a cocaine overdose. See *Payano*, 320 Wis. 2d 348, ¶¶67–68 (evidence has probative value if it “has a tendency to make the consequential fact or proposition more probable or less probable than it would be without the evidence”).

Second, the circuit court was within its discretion to determine that the danger of unfair prejudice or confusing the issues substantially outweighed any probative value of that evidence. The court could have reasonably determined that evidence that the victim tended to stay out all night, use cocaine and put herself in dangerous situations risked unfair prejudice to the State's case by placing the victim in a negative light. Additionally, this evidence could have confused the jury by distracting it from the real issues, that is, the events on the night of the victim's death and whether the victim died of a cocaine overdose or from strangulation. On this record, we discern no erroneous exercise of the circuit court's discretion.<sup>4</sup>

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>4</sup> Because we conclude that the circuit court properly exercised its discretion by excluding the defense evidence, we reject Golatt's argument that he was denied his constitutional right to present a defense. See *State v. Evans*, 187 Wis. 2d 66, 84, 522 N.W.2d 554 (Ct. App. 1994) (a defendant “has no constitutional right to present evidence that is outweighed by its prejudicial effect”).