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**DISTRICT II**

March 6, 2019

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

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2018AP892-CR                      State of Wisconsin v. Brandon K. Hackett (L.C. #2016CF570)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, 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).**

A jury found Brandon K. Hackett guilty of delivering heroin to a law enforcement informant. He now argues that the evidence presented at trial was insufficient to support the jury's verdict. 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 (2017-18).<sup>1</sup> We affirm the judgment of conviction.

Whether evidence was sufficient to support a verdict is a question of law that we review de novo. *State v. Smith*, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. In so reviewing, “we give deference to the jury’s determination and view the evidence in the light most favorable to the State. If more than one inference can be drawn from the evidence, we must adopt the inference that supports the conviction.” *State v. Long*, 2009 WI 36, ¶19, 317 Wis. 2d 92, 765 N.W.2d 557 (citation omitted). “We will not substitute our own judgment for that of the jury unless the evidence is so lacking in probative value and force that no reasonable jury could have concluded, beyond a reasonable doubt, that the defendant was guilty.” *Id.*

To support a conviction, the State needed to prove beyond a reasonable doubt that Hackett delivered a substance to a person, the substance was heroin, and Hackett knew or believed that the substance was heroin. WIS. STAT. § 961.41(1); WIS JI—CRIMINAL 6020. Hackett focuses on the first element, asserting that there was insufficient credible evidence showing the informant received heroin from him.

At trial, a City of Oshkosh police officer testified that a controlled buy was set up after the informant told him that he could purchase heroin from Hackett. Prior to the buy, the informant and his vehicle were searched and no money or contraband was found. The informant was then given prerecorded money to purchase the heroin. The informant initiated the buy through text messages with Hackett, which were presented at trial. The officer followed the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

informant to a predetermined location where he observed the informant and Hackett enter an apartment building. Inside the building, a hidden camera recorded Hackett counting money while he was interacting with the informant. After exiting the building a short time later, the informant turned over a package containing a substance that was later identified as heroin. A second officer was responsible for surveillance of Hackett's residence at the time and testified to observing Hackett leave and return during this brief period. The informant signed a statement that recounted each step of the controlled buy. Among the details, the statement read, "I gave [Hackett] the money and he gave me heroin. We both left after the exchange."

Notwithstanding this evidence, Hackett argues that his conviction was insufficiently supported because, at trial, the informant testified that he could not recall purchasing heroin from Hackett with money given to him by law enforcement. Hackett emphasizes this testimony was inconsistent with the informant's signed statement, which he argues was unbelievable as a matter of law because it was written by law enforcement and made during a time when the informant was using drugs and seeking law enforcement consideration, and because it was not sworn or supported by video evidence showing the exchange of heroin. Yet, all of these arguments and any evidentiary inconsistency they rely on are matters of credibility that were for the jury to resolve. *State v. Hahn*, 221 Wis. 2d 670, 683, 586 N.W.2d 5 (Ct. App. 1998). We see no reason to interfere with the jury's determination here.

Hackett also argues that the jury could not rely on the statement because the informant invoked his Fifth Amendment privilege against self-incrimination when asked whether he had ever planted drugs in the apartment building. Yet, nothing in the statement pertained to that question, nor did the informant's invocation of his constitutional privilege make him unavailable for cross-examination on the issue in dispute: namely, whether Hackett sold heroin to the

informant as alleged. *See State v. Horenberger*, 119 Wis. 2d 237, 247, 349 N.W.2d 692 (1984) (explaining that a prior inconsistent statement can be used as substantive evidence of guilt when the declarant is available for cross-examination).

When the evidence above is viewed as a whole and in the light most favorable to the State and the conviction, we conclude that a reasonable jury could find that Hackett delivered heroin to the informant.

Upon the foregoing reasons,

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*