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DISTRICT II

October 16, 2019

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

2018AP1706-CR State of Wisconsin v. Shuntaye C. Crenshaw (L.C. #2016CF57)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

Shuntaye C. Crenshaw appeals from a judgment of conviction, following a jury trial in which he was found guilty of first-degree reckless homicide. 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).¹ We affirm.

Crenshaw claims the evidence presented at trial was not sufficient for the jury to find him guilty of first-degree reckless homicide. We disagree.

As Crenshaw recognizes in his briefing, when reviewing a sufficiency of the evidence challenge, we consider “whether that evidence, viewed in the light most favorable to the state, is so insufficient in probative value and force that as a matter of law no reasonable jury could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 500, 451 N.W.2d 752 (1990). “If there is any possibility that the jury could have drawn the appropriate inferences from the evidence to support its verdict, we may not overturn that verdict even if we believe that the jury should not have found guilt based on the evidence.” *State v. Graham*, 2000 WI App 138, ¶6, 237 Wis. 2d 620, 614 N.W.2d 504. “[I]f more than one reasonable inference can be drawn from the evidence, we must adopt the inference that supports the verdict.” *State v. Mertes*, 2008 WI App 179, ¶10, 315 Wis. 2d 756, 762 N.W.2d 813.

To convict Crenshaw, the State needed to present evidence that he “cause[d] the death of another human being” “by [m]anufacture, distribution or delivery” of a Schedule I or Schedule II controlled substance. WIS. STAT. § 940.02(2)(a). More specifically broken down for this case, the State need to show that Crenshaw (1) delivered a substance to the victim; (2) the substance was a controlled substance, here heroin; (3) Crenshaw knew or believed that the substance was a

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

controlled substance; and (4) the victim “used the substance alleged to have been delivered by [Crenshaw] and died as a result of that use.” WIS JI—CRIMINAL 1021 (2011).

In this case, Crenshaw advances his appeal by pointing to evidence presented at trial which supports his theory that “the drugs he gave to [the victim] were fake.” But whether there was sufficient evidence to support Crenshaw’s claims of innocence is not our charge on appeal; our charge is to determine whether sufficient evidence of Crenshaw’s guilt was presented, such that a reasonable jury could have found him guilty.

There is no dispute that the victim died of a heroin overdose in the early morning hours of October 1, 2015, that Crenshaw sold him a substance of some sort shortly before this, and that heroin is a controlled substance. *See* WIS. STAT. § 961.14(3)(k). The only issue advanced by Crenshaw on appeal is his contention that “[t]here was no evidence” that the substance he delivered to the victim shortly before the victim’s death was heroin.

We can do no better than the State’s response brief summarizing evidence supporting the verdict:

The State introduced evidence of text messages exchanged between [the victim] and Crenshaw in which Crenshaw agreed to sell [the victim] heroin on the night of September 30. [The victim] also informed his friend Sullivan via text message that Crenshaw had agreed to sell him heroin. Video surveillance showed [the victim] walking from his dormitory at Concordia University towards a car outside the parking lot around 1:30 a.m. on October 1, then joining his friends in a red Jeep and driving out of the parking lot, turning onto a public road, and being followed by another vehicle. The video then showed the red Jeep return to the parking lot about 20 minutes later, at which point [the victim] exited and returned to his dorm room. Cell-phone positioning indicated that Crenshaw was in the area at this time, a police officer pulled Crenshaw over just one mile away from the university at 1:42 a.m., and Crenshaw told the officer that he had been visiting a friend at Concordia. Crenshaw’s cousin testified

that he and Crenshaw “met up with some dude” near Concordia University and that this person gave Crenshaw money and a prescription bottle in exchange for a black plastic bag.

... Detective Polishinski searched [the victim’s] dorm room on October 1 and found on [the victim]’s desk a pen cap “sitting in a white residue powder” next to “a small line of a powdery substance.” Both the pen cap and the line of powder tested positive for heroin. Toxicology tests revealed that [the victim] had heroin in his system. Finally, Detective Eibs testified that drug users would typically use their drugs shortly after purchase, and [the victim]’s friend Sullivan testified that [the victim]’s habits were consistent with this.

... Text messages revealed that Crenshaw agreed to sell heroin to [the victim]. [The victim] sent Crenshaw a message asking “how about I give you 10 for gas and then you bring up a half ounce of loud for \$150, a gram of shadder for \$40, and then 15 xans for the point of boy,” and Crenshaw responded, “ok.” Both Detective Eibs and Detective Polishinski, as well as [the victim]’s friend Sullivan, testified that “boy” refers to heroin. [The victim] again texted Crenshaw to confirm his order for heroin and other drugs, “Weed—half ounce, molly .15, boy .1, shadder 1g total price \$100 plus 10 bucks for gas and 15 xans,” and reminded Crenshaw to bring paraphernalia, to which Crenshaw again replied, “ok.”

... Detective Polishinski found heroin in “a small line” on [the victim]’s desk. Detective Polishinski explained that people would put heroin in a line in order to snort it, and [the victim] had blood coming from his nose when he was found. The toxicology report also indicated that [the victim] had a “significant” amount of heroin in his system when he died. And while [the victim] also had Xanax in his system, that drug alone would not have caused [the victim]’s death. Thus, the Assistant Medical Examiner determined [the victim]’s cause of death to be “[a]cute mixed drug intoxication” and opined that the heroin was a “substantial factor” in causing [the victim]’s death.

(Citations omitted.)

From this evidence, a jury could reasonably infer that Crenshaw delivered heroin to the victim, Crenshaw knew or believed the substance he delivered to the victim was heroin, and the victim used the heroin Crenshaw delivered and died as a result of that use. The evidence presented to the jury was sufficient to support its verdict of guilty.

Therefore,

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.

Sheila T. Reiff
Clerk of Court of Appeals