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DISTRICT IV

April 9, 2020

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

2018AP22233-CR

State of Wisconsin v. Darrick E. Anderson (L.C. # 2017CF817)

Before Blanchard, Kloppenburg 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).

Darrick Anderson appeals a judgment convicting him of first-degree intentional homicide by use of a dangerous weapon.¹ Based upon our review of the briefs and record, we conclude at

¹ The notice of appeal erroneously states that Anderson is appealing a judgment entered on October 12, 2017, "finding the defendant guilty of seven felony counts including first degree intentional
(continued)

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).² We affirm for the reasons discussed below.

Anderson challenges the admission of evidence that he had previously engaged in homosexual sexual activity with a third party who was not involved in the homicide. The evidence was offered for the purpose of showing Anderson's sexual orientation, which Anderson contends was irrelevant to whether he committed the homicide. The State argues that Anderson's sexual orientation was relevant because there was some indication that the victim had engaged in homosexual activity prior to his death. However, we need not decide whether the challenged evidence should have been excluded because we conclude that its admission was, at most, harmless error.

An error is harmless when it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error. *State v. Harris*, 2008 WI 15, ¶43, 307 Wis. 2d 555, 745 N.W.2d 397. Whether the circuit court's erroneous admission of evidence was harmless presents a question of law that this court reviews independently. *State v. Hunt*, 2014 WI 102, ¶21, 360 Wis. 2d 576, 851 N.W.2d 434.

Here, the State presented overwhelming evidence of Anderson's guilt. Surveillance videos from a series of cameras showed that the victim, Andrew Nesbitt, encountered Anderson outside a gas station at about 3:42 a.m. on March 27, 2017, and walked with him through

homicide, and sentencing the defendant to life in the Wisconsin State Prison." The October 12, 2017 judgment contains only a single homicide count. A separate judgment was entered on January 4, 2018, convicting Anderson of six misdemeanors. This opinion focuses on the felony homicide conviction that was entered on the date identified in the notice of appeal.

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

downtown Madison. Nesbitt's roommate subsequently returned home and discovered Nesbitt's body in their apartment.

Nesbitt had suffered 41 stab wounds and 35 incised wounds. The chief medical examiner determined that Nesbitt had been killed on his bed and that almost all of the wounds were consistent with a single-edged knife. An investigator trained in bloodstain pattern analysis found "passive bloodstains" that had dripped straight down in a trail coming out of the bedroom, going toward the bathroom, and then going out of the apartment through the kitchen. The investigator interpreted the pattern of blood throughout the apartment to indicate that the perpetrator had suffered an injury to his right hand during the attack when the blade struck bone or some other hard substance and the hand holding the knife slipped onto the blade.

Later in the same day that Nesbitt had been killed, Anderson used a false name while seeking treatment at an urgent care clinic for multiple lacerations to his hands. The urgent care clinic transferred Anderson to the emergency room because he had lost a significant amount of blood and some of the wounds were deep enough to have cut tendons that required surgery. Anderson claimed that he had sustained the injuries from a broken glass while washing dishes the night before, and had been wearing a series of socks on his hands all night to stem bleeding. The resident physician in the emergency room thought it was strange that Anderson had delayed seeking care, given the ongoing bleeding and the fact that Anderson could not bend several of his fingers.

Finally, an analyst from the State Crime Laboratory identified Anderson's DNA in blood samples taken from Nesbitt's apartment, including from the kitchen floor, the bed frame and

mattress in Nesbitt's room, a shirt, and a light switch. A latent print examiner also found Anderson's fingerprint on the toilet handle in the apartment.

In sum, Anderson was the last known person to see Nesbitt alive; Anderson severely cut his hand on the same day that Nesbitt was stabbed to death by an attacker who likely suffered an injury to his hand during the attack; and, most incriminating of all, a trail of Anderson's own blood led away from the murder scene. It is clear beyond a reasonable doubt that a rational jury would have found Anderson guilty even if the testimony about his sexual orientation had been excluded.³

IT IS ORDERED that the judgment of conviction is summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals

³ Anderson also initially challenged a jury instruction on the burden of proof, but has withdrawn that issue.