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DISTRICT II

April 26, 2023

To:

Hon. Mark Rohrer
Circuit Court Judge
Electronic Notice

Andrew Hinkel
Electronic Notice

April Higgins
Clerk of Circuit Court
Manitowoc County Courthouse
Electronic Notice

Donald V. Latorraca
Electronic Notice

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

2021AP2216-CR

State of Wisconsin v. Juan A. Cortez (L.C. #2017CF692)

Before Gundrum, P.J., Neubauer and Lazar, 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).

Juan A. Cortez appeals from a judgment, entered on a jury verdict, convicting him of conspiracy to deliver more than forty grams of cocaine. On appeal, Cortez argues the trial court erroneously exercised its discretion by preventing Cortez from cross-examining a State's witness on specific instances of untruthful conduct. 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 (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

At trial, a confidential informant, Carrie,² testified that she bought cocaine on various occasions from Michael Meisner. On two occasions, officers observed Meisner meeting with Cortez before Meisner delivered cocaine to Carrie. After both cocaine deliveries by Meisner to Carrie, officers stopped Cortez's vehicle and located thousands of dollars on Cortez's person. Police arrested Meisner, searched Meisner's home, and found a large quantity of cocaine and digital scales. Meisner advised police Cortez was the source of his cocaine. Police then arrested Cortez and searched his home on the same day. Cortez emerged from the basement some time after police began calling for him, and had wet hands. Police located a cookie jar in the basement with a white residue that tested positive for cocaine.

Cortez sought to attack Carrie's credibility by questioning her about incidents that had led her to being charged with six counts of forgery and one count of fraud against a bank. Cortez argued the incidents were admissible pursuant to WIS. STAT. § 906.08(2). The trial court refused to permit Cortez to question Carrie on the matters. Ultimately, Cortez was convicted and sentenced to prison.

On appeal, Cortez argues the trial court's refusal to allow Cortez to cross-examine Carrie on the fraud and forgery allegations was an error of law, and thus an erroneous exercise of discretion. *See State v. Hunt*, 2014 WI 102, ¶20, 360 Wis. 2d 576, 851 N.W.2d 434 (evidentiary determinations are reviewed for an erroneous exercise of discretion). The State responds that the trial court properly exercised its discretion by excluding the evidence and that any error was harmless. We agree with the State that any error in the exclusion of the evidence was harmless.

² We use a pseudonym for the confidential informant.

The erroneous exclusion of evidence is subject to the harmless error rule. *Hunt*, 360 Wis. 2d 576, ¶26 (citing WIS. STAT. § 901.03(1)). For the error to be deemed harmless, the party that benefited from the error—here, the State—must prove beyond a reasonable doubt that the error did not contribute to the jury’s verdict. *See id.* Factors to be considered in a harmless-error analysis include: “the importance of the erroneously admitted or excluded evidence; the presence or absence of evidence corroborating or contradicting the erroneously admitted or excluded evidence; the nature of the defense; the nature of the State’s case; and the overall strength of the State’s case.” *Id.*, ¶27.

Here, we conclude the exclusion of the fraud and forgery allegations was harmless beyond a reasonable doubt. The State’s case did not depend on Carrie’s credibility. Carrie did not implicate Cortez in her testimony—she testified she bought the cocaine from Meisner and had no knowledge about Meisner’s cocaine source. Carrie believed Meisner had cocaine sources in Chicago, Sheboygan, and Oshkosh, but she had never met any sources and did not know any specifics about them. Carrie explicitly testified she had never met, seen, or talked to Cortez.

Meisner, not Carrie, testified Cortez was his cocaine source. Cortez’s defense in turn focused on attacking Meisner’s credibility, which the State was able to bolster with circumstantial evidence showing Cortez was the source of Meisner’s cocaine. One time, officers observed Meisner meet with Cortez before Meisner sold Carrie two ounces of cocaine. When officers subsequently stopped Cortez after his meeting with Meisner, they found \$2,803 in Cortez’s wallet. On another occasion, Carrie arranged to purchase \$6,400 worth of cocaine from Meisner. Officers surveilled Meisner and observed him meet with Cortez before the controlled buy. Officers subsequently stopped Cortez’s vehicle and found a large amount of cash in Cortez’s wallet—Cortez told the officer it was \$5,000.

There is no reasonable probability that the jury would have reached a different verdict had the court allowed Cortez to cross-examine Carrie about the fraud and forgery allegations. Carrie's testimony did not establish Cortez was the source of the cocaine she purchased. Cortez's inability to cross-examine Carrie about the fraud and forgery allegations did not undermine his defense, which centered on Meisner's credibility, and had no bearing on the strength of the officers' testimony connecting Cortez to Meisner immediately before or after some of Carrie's controlled buys from Meisner.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court 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