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DISTRICT II

May 29, 2024

To:

Hon. Todd K. Martens
Reserve Judge

David Malkus
Electronic Notice

Sarah Adjemian
Clerk of Circuit Court
Washington County Courthouse
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

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

2022AP1444-CR

State of Wisconsin v. Breon L. Lawrence (L.C. #2020CF358)

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).

Breon L. Lawrence appeals from a judgment convicting him of one count of first-degree reckless homicide and four counts of felony bail jumping. Lawrence argues that the circuit court incorrectly instructed the jury regarding the charge 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 (2021-22).¹ We affirm.

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

Lawrence was charged with one count of first-degree reckless homicide and four counts of felony bail jumping after allegedly delivering heroin to Troy Johnson, who died from a mixed drug overdose involving heroin and isotonitazene. At trial, the circuit court instructed the jury about the elements of reckless homicide using the pattern jury instruction, WIS. JI-CRIMINAL 1020. The jury found Lawrence guilty on all counts. The court sentenced Lawrence to twelve years of initial confinement followed by twelve years of extended supervision for the homicide charge, with consecutive probation terms for the bail jumping counts.

Jury instructions must “... fully and fairly inform the jury of the rules of law applicable to the case and ... assist the jury in making a reasonable analysis of evidence.” *State v. Coleman*, 206 Wis. 2d 199, 212, 556 N.W.2d 701 (1996). Whether the jury instructions given by the circuit court were appropriate under the facts of the case is a question of law that we review de novo. *State v. Draughon*, 2005 WI App 162, ¶9, 285 Wis. 2d 633, 702 N.W.2d 412.

A person is guilty of first-degree reckless homicide if he or she delivers a controlled substance to another person who uses the controlled substance and dies as a result of that use, either from using the controlled substance by itself or with any substance mixed with the controlled substance. WIS. STAT. § 940.02(2)(a). To inform the jury of the elements of the homicide charge, the circuit court instructed the jury using the pattern jury instruction for first-degree reckless homicide, WIS. JI-CRIMINAL 1021. The instruction provided:

Elements of the Crime that the State Must Prove

1. The defendant delivered a substance....
2. The substance was heroin.
3. The defendant knew or believed that the substance was a controlled substance....

4. [The victim] used the substance alleged to have been delivered by the defendant and died as a result of that use.

This requires that use of the controlled substance was a substantial factor in causing the death.

This statute applies whether the human being dies as a result of using the controlled substance by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant delivered heroin, that the defendant knew that the substance was a controlled substance, that [the victim] used the substance delivered by the defendant, and that [the victim] died as a result of that use, you should find the defendant guilty of first degree reckless homicide....

Lawrence argues that the circuit court erred by using this pattern jury instruction because it uses the term “substance,” rather than specifying that Johnson’s death needed to be from ingesting heroin. Lawrence contends this is crucial because the substance delivered to Johnson contained both heroin and isotonitazene, which was not a controlled substance at the time of the offense. Lawrence argues that the instruction misstated the law because it was unclear about whether death from a combination of heroin and isotonitazene could legally be attributed solely to the heroin.

We reject this argument. The jury instruction was clear. It informed the jury that Johnson’s death could legally be attributed to the delivered substance if the delivered substance contained heroin, regardless of whether it was mixed with another substance. The instruction explicitly states that a defendant is guilty “whether the human being dies as a result of using the controlled substance by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance.” The jury instruction also properly addressed the

causation element required for a conviction because it made clear that the use of the controlled substance had to be a substantial factor in causing the death in accord with the statutory requirement. *See* WIS. STAT. § 940.02(2)(a)1. (stating that the statute applies whether the controlled substance alone or mixed with another substances causes death). The jury instruction was therefore accurate and appropriate, and properly informed the jury of the law regarding controlled substances and causation.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed.

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

Samuel A. Christensen
Clerk of Court of Appeals