STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2018AP2305-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MISTER N.P. BRATCHETT,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE JEFFREY A. CONEN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

ISSUE PRESENTED

When it is viewed most favorably to the State and the conviction, was the evidence sufficient for a rational jury to find Defendant-Appellant Mister N.P. Bratchett guilty beyond a reasonable doubt of mutilating a corpse?

Bratchett intentionally set fire to a car containing the deceased victim's body. The jury found beyond a reasonable doubt that he mutilated the body to conceal evidence of a crime.

This Court should hold that the evidence was sufficient to convict and affirm.

POSITION ON ORAL ARGUMENT AND PUBLICATION

The State agrees with Bratchett that this case does not merit oral argument or publication. It is appropriate for summary affirmance. Wis. Stat. § (Rule) 809.21.

STATEMENT OF THE CASE

The State proved beyond a reasonable doubt, and Bratchett does not dispute, that he intentionally set fire to a car containing Brandon Blunt's deceased body on Christmas morning 2016, mutilating Blunt's body almost beyond recognition.

Blunt died earlier of an opiate overdose at a recording studio/drug house in the presence of Bratchett and others. After Blunt overdosed, the evidence showed, Bratchett drove Blunt's car with his body inside of it to a park and then to a gas station where he purchased a can of gasoline for $5. Bratchett then drove to the alley near 54th Street and Capitol Drive where he torched the car with Blunt's body in the driver's seat. (R. 117:19–23, 27, 33–34; 118:40, 54–57, 74, 89–90; 120:12, 16–17, 24–29, 31–39.)

Bratchett did not testify or put on any defense. (R. 120:50, 54.)

The jury found Bratchett guilty of one count each of arson to property other than a building (the car driven by Blunt), and mutilating a corpse. (R. 79; 121:5.)

Bratchett does not dispute that he committed the crime of arson and does not dispute that he mutilated Blunt's corpse. The only disputed issue at trial, and the only issue for this Court, is whether the State proved beyond a reasonable doubt that Bratchett mutilated Blunt's corpse to conceal evidence of a crime. The jury found beyond a reasonable doubt that he did.

The trial court sentenced Bratchett on the two counts to concurrent terms totaling 7.5 years of initial confinement followed by 2.5 years of extended supervision. (R. 122:37–38.)

Bratchett appeals directly from the judgment of conviction. (R. 95; 106.)

STANDARD OF REVIEW

On review of a challenge to the sufficiency of the evidence to convict, this Court must uphold the jury's verdict unless it determines, after viewing the evidence most favorably to the State and the conviction, that no rational jury could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

ARGUMENT

When it is viewed in the light most favorably to the State and the conviction, the evidence was sufficient for a rational jury to find beyond a reasonable doubt that Bratchtett mutilated Blunt's body to conceal evidence of a crime or crimes.

Bratchett argues that the State failed to prove he destroyed Blunt's body for the purpose of concealing evidence of a crime. The jury could rationally find beyond a reasonable doubt that Bratchett realized he and his friends, who were present when Blunt overdosed, faced criminal liability for a number of offenses if police learned that Blunt died of an opioid overdose at their drug house rather than in a car fire.

The jury truly had little choice but to find Bratchett guilty because the circumstantial evidence of his intent to conceal evidence of a crime or crimes was overwhelming. What other reason, after all, would Bratchett have to burn Blunt's body other than to conceal evidence of a crime or crimes? Bratchett did not offer a reason at trial. He does not offer one here.

A. This Court must uphold the verdict unless, after viewing the evidence most favorably to the State and the conviction, no rational jury could have found Bratchett guilty beyond a reasonable doubt.

This Court "may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *Poellinger*, 153 Wis. 2d at 507. If the jury could possibly "have drawn the appropriate inferences from the evidence" to find Bratchett guilty, this Court must uphold the verdict "even if it believes

that the trier of fact should not have found guilt based on the evidence before it." *Id.*

When more than one inference can reasonably be drawn from the evidence, the inference that supports the jury's verdict must be the one followed by this Court on review. *State v. Allbaugh*, 148 Wis. 2d 807, 809, 436 N.W.2d 898 (Ct. App. 1989). This Court may overturn the verdict "only if the trier of fact could not possibly have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt." *State v. Watkins*, 2002 WI 101, ¶ 68, 255 Wis. 2d 265, 647 N.W.2d 244.

The jury is the sole arbiter of the credibility of witnesses and alone is charged with the duty of weighing the evidence. *Poellinger*, 153 Wis. 2d at 506. It is exclusively within the province of the jury to decide which evidence is worthy of belief, which is not, and to resolve any conflicts in the evidence. *State v. Wyss*, 124 Wis. 2d 681, 693, 370 N.W.2d 745 (1985). The standard for review is the same whether the verdict is based on direct or circumstantial evidence. *Poellinger*, 153 Wis. 2d at 503.

"This court will only substitute its judgment for that of the trier of fact when the fact finder relied upon evidence that was inherently or patently incredible—that kind of evidence which conflicts with the laws of nature or with fully-established or conceded facts." *State v. Tarantino*, 157 Wis. 2d 199, 218, 458 N.W.2d 582 (Ct. App. 1990).

Review is highly deferential because, "an appellate court should not sit as a jury making findings of fact and applying the hypothesis of innocence rule de novo to the evidence presented at trial." *Watkins*, 255 Wis. 2d 265, ¶ 77, (citing *Poellinger*, 153 Wis. 2d at 505–06.) "It is not the role of an appellate court to do that." *Id.* at 506. *See State v. Steffes*, 2013 WI 53, ¶ 23, 347 Wis. 2d 683, 832 N.W.2d 101 (citing *Poellinger*, 153 Wis. 2d at 505–06, for the proposition that an

appellate court will uphold the verdict "if any reasonable inferences support it").

B. The elements of Wis. Stat. § 940.11(1), mutilating a corpse with intent to conceal a crime

The jury was properly instructed on the offense of mutilating a corpse to conceal a crime set out at Wis. Stat. § 940.11(1). (R. 120:58–59.) The State must prove two elements: (1) Bratchett mutilated a corpse: (2) he did so with the specific intent to conceal a crime, meaning that he "acted with the purpose to conceal a crime." Wis. JI–Criminal 1193 (2006). (R. 120:59.)

Bratchett's intent was to be found from his "acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent." Wis. JI–Criminal 1193. With regard to the second element, the jury need not be unanimous as to which crime or crimes it believes Bratchett was trying to conceal. *Id.*, Comment ¶ 2 (citing *State v. Hammer*, 216 Wis. 2d 213, 576 N.W.2d 285 (Ct. App. 1997)).

C. The State presented powerful circumstantial evidence establishing that Bratchett burned Blunt's body to conceal evidence of several crimes.

Bratchett did not at trial, and does not here, offer any rational explanation for destroying Blunt's body other than for the purpose of concealing evidence of a crime or crimes.

The jury knew or could reasonably infer from the following evidence adduced by the State at trial that Bratchett burned Blunt's corpse to conceal evidence of a number of crimes.

"[S]omeone intentionally set that vehicle on fire." (R. 118:40.)

Bratchett and Blunt were together on Christmas Eve and spent some time at their recording studio/drug house on 38th Street earlier that evening. (R. 119:19–20, 41–42, 46–47, 82–83.) The two men left there to go to Rashawn Lawson's house at the request of Sara Manning to fix a pipe she accidentally damaged while cleaning. (R. 119:84–85.) Bratchett helped fix the pipe and, while there, either he or Blunt stole a pair of Lawson's white Air Jordan shoes and his Derringer two-shot pistol hidden in his closet. Bratchett and Blunt then returned to the drug house. (R. 118:91–97; 119:13–18, 84–86.) When they returned to the drug house, Bratchett and Blunt tried to sell a pair of white Air Jordan shoes and a pistol to Christopher Shoular for $80 or $90. (R. 119:52–53.) Bratchett also tried to sell Shoular the same gun, the Derringer stolen from Lawson's house, two days after Christmas. (R. 119:58–60.)

Bratchett's smart phone chronicled circumstantially what happened throughout the early morning of Christmas Day. (R. 119:88–89; 120:8–10.) Thanks to the Google Maps application on Bratchett's phone (R. 120:18), police learned that the phone was at 5873 North 38th Street, the studio/drug house, at 12:18 a.m. (R. 120:21). A video on Bratchett's phone shows a nearly comatose Blunt passed out in a chair at the drug house with a Derringer pistol on his lap at 2:58 a.m. (R. 120:12, 16–17.) This was the same gun stolen from Lawson's home while Blunt and Bratchett were there fixing the pipe. (R. 118:99, 101; 120:42–44.) Not long thereafter, Blunt died of an opioid overdose. (R. 118:54–57.) "He was dead before the fire started." (R. 118:57.)

The GPS system on Bratchett's phone showed it travelling to various locations after 4 a.m., including to a city park and two gas stations. (R. 120:23–25.) The phone stopped at the second gas station, a BP station on 76th Street, at 6:31 a.m. (R. 120:25.) Video surveillance footage from the BP gas station shows the driver of a black four-door sedan, an

African-American man dressed like Bratchett, purchasing $5 worth of gasoline in a can. (R. 120:31–42.) Shoular identified the man in the gas station video as Bratchett. (R. 119:60–63.) The phone next stopped in the alley near 54th and Capitol from 7:10 to 7:18 a.m. (R. 120:26), or two minutes before police received the citizen call reporting the fire there at 7:20 a.m. (R. 117:19; 120:28). Surveillance video in the alley from approximately 100 feet away showed a car parking at the end of the alley, a human figure moving about the exterior of the car, a flash, and a human figure immediately moving away from the burning car on foot towards 55th Street. (R. 117:38–39, 46–55, 60.) Bratchett's phone next stopped five minutes later around the corner at 3808 North 55th Street where the phone remained from 7:23 a.m. to 3:23 p.m. Christmas Day. (R. 120:27–29.) That address is the home of Bratchett's sister and the place where police arrested him on January 5, 2017. (R. 119:79.)

When police searched the studio/drug house at 5873 North 38th Street, they found evidence that Bratchett lived there. (R. 119:68.) Shoular testified that Bratchett was living there at the time. (R. 119:47.) Police found all sorts of controlled substances: crack cocaine, marijuana, and over 600 pills including oxycodone and Alprazolam. (R. 119:69–70.) They also found in a backpack a prescription for oxycodone filled out for Bratchett. (R. 119:71.)

When questioned by police before his arrest, Bratchett admitted that he previously lived at the drug house and was there with Blunt on Christmas Eve. (R. 119:82.) Bratchett said he and Blunt were at the house earlier in the evening when Sara Manning called asking for help to fix a broken pipe at Lawson's house. (R. 119:84.) They both drove to Lawson's house in Blunt's black Honda to fix the pipe, and they returned thereafter to the drug house. (R. 119:84–86.) Bratchett claimed that Blunt later dropped him off at his sister's house, and he never saw Blunt again. (R. 119:86–87.)

There is, therefore, no serious dispute here that Blunt died of an overdose in the presence of Bratchett and others sometime after 3 a.m. at their studio/drug house with the stolen Derringer in his lap. Rather than call 911, Bratchett or the others put Blunt's body into the black four-door Honda that Blunt drove to the party. Bratchett eventually drove the Honda with the deceased Blunt somewhere inside to the BP gas station on 76th Street where he purchased $5 worth of gasoline in a can at 6:31 a.m. Bratchett then drove to the alley near 54th and Capitol where he parked Blunt's car, moved Blunt's lifeless body into the driver's seat, poured the gasoline around Blunt's body, and set fire to the car. Bratchett immediately fled on foot to his sister's house around the corner. (R. 117:20–23, 27, 33–34, 38–39, 46–55; 118:32–33, 40.) The only remaining issue is why Bratchett decided to destroy Blunt's body.

Perhaps Bratchett burned Blunt's deceased body because he was a "fire bug" who liked to see flames and watch human flesh burn. But that makes no sense because Bratchett fled immediately after he poured the gasoline all over Blunt and set the car on fire. Perhaps Bratchett hated Blunt and wanted to degrade him and torture his relatives by destroying his body. But that makes no sense because Bratchett and Blunt were friends and had, indeed, spent most of the evening together amicably before Blunt overdosed.

Blunt did not die of his extensive burns or of asphyxiation from the fire. The autopsy revealed that Blunt died of lethal doses of both Oxycodone and Alprazolam (R. 118:54–57), which were two of the many controlled substances found by police when they executed the search warrant at the 38th Street drug house where Blunt died and where Bratchett lived off and on. Police found Bratchett's filled oxycodone prescription there (R. 119:71).

The jury could reasonably infer from this evidence that Bratchett destroyed Blunt's body in hopes of avoiding

criminal liability both for himself and his friends at their drug house. Bratchett faced potential liability for a variety of criminal offenses.

If Bratchett gave Blunt the lethal dose of Oxycodone, he could be charged with first-degree reckless homicide. Wis. Stat. § 940.02(2)(a). *See State v. Clemons*, 164 Wis. 2d 506, 509, 476 N.W.2d 283 (Ct. App. 1991).

If Bratchett gave any controlled substances to Blunt, he could be criminally liable for delivering a controlled substance. Wis. Stat. § 961.41(1)(a), (i). If Bratchett gave any of his prescription Oxycodone to Blunt, he could be held criminally liable for delivering a prescription drug without a prescription. Wis. Stat. § 450.11(1), (7)(g).

Bratchett likely knew that, even if he were not liable, his friends could be held criminally liable for maintaining a drug house. Wis. Stat. § 961.42(1). Bratchett, as a resident of that house, certainly would become a material witness against his friends who owned or rented the house. With all of the drugs found in the drug house, Bratchett, and the others who lived there or frequented it, faced potential liability for possession with intent to deliver a prescription drug, Wis. Stat. § 450.11(9)(b), or possession with intent to deliver various controlled substances. Wis. Stat. § 961.41(1m)(a), (1m)(i), (3g)(a).

Bratchett also could have feared criminal liability for theft of the Derringer gun and the Air Jordan shoes from Lawson's house. Wis. Stat. § 943.20. Bratchett desperately tried to sell the gun two days after the arson fire. (R. 119:60.) If Bratchett stole the gun and shoes from Lawson's house, proof that Blunt died of an overdose would have led directly back to the drug house, revealing that Bratchett and Blunt were both there when Blunt overdosed, and they were together earlier throughout the evening. Blunt's girlfriend, Manning, would then have tied Blunt and Bratchett to

Lawson's house, where he and Blunt went at Manning's request to fix the broken pipe, and stole the Air Jordan shoes and the Derringer while there before returning to the drug house.

Bratchett no doubt hoped that by completely destroying Blunt's body beyond all recognition, police would not be able to tie him to the drug house, to all of the drugs possessed with the intent to deliver inside of it, to his prescription oxycodone, and to the stolen Derringer and Air Jordan shoes that were likely also still inside the drug house. Unfortunately for Bratchett, there was just enough left of Blunt's body and his Honda to enable police to determine who he was, the true cause of his death, and his connection to Bratchett and the recording studio/drug house. (R. 117:63–68; 118:16, 18, 74.)

Bratchett did not have to be a criminal lawyer, or to be conversant with the specific provisions of the Wisconsin Controlled Substances Act, to know that he and his friends faced serious criminal liability on a number of fronts if police learned that Blunt died of an opioid overdose at their studio/drug house. Bratchett needed only street smarts to know that he and his friends faced criminal liability if police learned the true cause of Blunt's demise and worked backwards from there. A rational jury could, and did, so find beyond a reasonable doubt.

D. The State did not have to prove that Bratchett committed the crime or crimes he intended to conceal.

Bratchett concedes that "evidence of various crimes is present in the record" and "was abundant in the record." (Bratchett's Br. 15.) "Mr. Lawson's gun and shoes were taken, and evidence suggested that Mr. Blunt and Mr. Bratchett possessed the gun at times after the gun disappeared from Mr. Lawson's home." (*Id.* 16.) Bratchett concedes further that the search of the studio/drug house produced evidence of drug

dealing (*id*.), and that there was potential liability for first-degree reckless homicide for causing Blunt's death by delivering controlled substances to him (*Id*. 16–17). Bratchett argues that he is not guilty because the State did not prove *he* was the source of the drugs that killed Blunt. (*Id*. 17.) Yet, Bratchett later concedes, rather obliquely, that "[t]he elements of mutilating a corpse do not include any requirement that the person so charged to have caused the death resulting in the corpse." (*Id*. 18.) So, by his own admission, the State only had to prove that Bratchett intended to conceal a crime committed by *someone*. (*See id*. 19 (citing *State v. Pinno*, 2014 WI 74, 356 Wis. 2d 106, ¶¶ 25–26, 30, 850 N.W.2d 207, where the court upheld the conviction of Ms. Pinno for concealing the corpse of the victim her son murdered).) The statute, after all, only requires proof of the intent to conceal evidence of a crime, not necessarily of a crime committed by the person who mutilated the corpse. Wis. Stat. § 940.11(1).

E. Bratchett forfeited his due process/unanimity challenge.

Bratchett next complains that the trial court did not instruct the jury that it had to unanimously agree on which crime or crimes he was trying to conceal when he mutilated Blunt's body. He argues that this denied him due process. (Bratchett's Br. 20–24.) Bratchett concedes that this claim is not reviewable now because he forfeited it by failing to object to the jury instructions. (*Id*. 26 (citing *State v. Schumacher*, 144 Wis. 2d 388, 409, 424 N.W.2d 672 (1988).) Bratchett also failed to raise a unanimity challenge to the charge, to the prosecutor's closing argument, or to the verdict at any point before, during or after trial.

Failure to object in the trial court generally precludes appellate review of a claimed error, even an error of constitutional dimension. *E.g., State v. Huebner*, 2000 WI 59,

¶¶ 10–11, 235 Wis. 2d 486, 611 N.W.2d 727; *State v. Davis*, 199 Wis. 2d 513, 517–19, 545 N.W.2d 244 (Ct. App. 1996); *State v. Edelburg*, 129 Wis. 2d 394, 400–01, 384 N.W.2d 724 (Ct. App. 1986); *see also Pinno*, 356 Wis. 2d 106, ¶¶ 56–66 (claimed denial of the structural public trial right at voir dire was forfeited by failure to timely object).

To properly preserve an objection for review, Bratchett had to "articulate the specific grounds for the objection unless its basis is obvious from its context[ ] . . . so that both parties and courts have notice of the disputed issues as well as a fair opportunity to prepare and address them in a way that most efficiently uses judicial resources." *State v. Agnello*, 226 Wis. 2d 164, 172–73, 593 N.W.2d 427 (1999) (citations omitted). The basis for Bratchett's due process/unanimity objection was not obvious to anyone, even his own attorney, at trial. *Agnello*, 226 Wis. 2d at 172–73.

Bratchett forfeited his due process/unanimity argument by not raising it either at trial or on postconviction review. He does not even present it as a separate argument here, instead clumsily folding it into his sufficiency-of-the-evidence challenge. This Court should not excuse his forfeiture.

F. On the merits, Bratchett was not denied the right to a unanimous verdict.

The jury only had to unanimously decide whether Bratchett intended to conceal a crime or crimes. It did not have to unanimously agree on which specific crime or crimes Bratchett intended to conceal by mutilating Blunt's corpse. Bratchett concedes that there were a number of crimes for which Bratchett might have feared liability. They "include theft of a gun, theft of shoes, drug possession, a prescription for Oxycodone in Mr. Bratchett's name, and Mr. Blunt's death by overdose." (Bratchett's Br. 24.) Bratchett is guilty if the

jury unanimously agreed that he was trying to conceal evidence of one, two, or all of those crimes.

Analogous is *State v. Hammer*, where this Court held that, in a burglary prosecution for entry with intent to commit a felony, the jury only had to agree that the defendant entered with the intent to commit "a felony"; it did not have to be unanimous as to which felony he intended to commit. 216 Wis. 2d at 220. Bratchett could, therefore, properly be found guilty if three jurors believed he intended to conceal his or his friends' liability for reckless homicide, three others believed he intended to conceal his or his friends' liability for maintaining a drug house, three others believed he intended to conceal his or his friends' liability for delivering a prescription drug or various controlled substances, and the remaining three believed he intended to conceal his own lability for the theft of Lawson's Derringer and Air Jordan shoes. Bratchett likely feared criminal liability for several offenses, not just one. "There are different means of accomplishing this crime, but the different ways do not create separate and distinct offenses." *Id.* at 220.

All twelve jurors had to unanimously agree only that Bratchett did what he did to conceal evidence of one or more crimes. "The language indicates that the emphasis is on the fact that the defendant had the intent to commit a felony and it does not matter which felony formed the basis of that intent." *Hammer*, 216 Wis. 2d at 220. Here, all twelve jurors agreed that Bratchett intended to conceal one or more crimes, and it does not matter which crime or crimes formed the basis of his intent. *See Richardson v. United States*, 526 U.S. 813, 817 (1999) ("[A] federal jury need not always decide unanimously which of several possible sets of underlying brute facts make up a particular element, say, which of several possible means the defendant used to commit an element of the crime."); *see also Lampkins v. Gagnon*, 710 F.2d 374, 376–78 (7th Cir. 1983) (upholding against a

unanimous-verdict challenge alternative forms of party-to-a-crime liability under Wis. Stat. § 939.05); *State v. Horenberger*, 119 Wis. 2d 237, 243, 349 N.W.2d 692, 695 (1984) (same).[1]

A rational jury could and did unanimously find beyond a reasonable doubt that Bratchett mutilated Blunt's corpse for the purpose of concealing a crime or crimes.

CONCLUSION

This Court should affirm the judgment of conviction.

Dated this 22nd day of April 2019.

Respectfully submitted,

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[1] Bratchett forfeited, by not objecting to the jury instructions, the argument that the trial court should have listed what crimes he may have been trying to conceal. Any error also was harmless because Bratchett concedes, and presumably would have similarly conceded at trial had he raised the issue, that there were a number of crimes for which he faced potential liability. (Bratchett's Br. 24.) Had Bratchett objected, those crimes would have been listed and the verdict would have been the same.

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,013 words.

Dated this 22nd day of April, 2019.

_____
DANIEL J. O'BRIEN
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 22nd day of April, 2019.

_____
DANIEL J. O'BRIEN
Assistant Attorney General