FILED
01-27-2023
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2022AP001927-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KELSY R. WOOLDRIDGE,

Defendant-Appellant.

Appeal from a Judgment of Conviction
Entered in the Barron County Circuit Court,
the Honorable Maureen D. Boyle, Presiding

BRIEF OF DEFENDANT-APPELLANT

KATHILYNNE A. GROTELUESCHEN
Assistant State Public Defender
State Bar No. 1085045

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1770
grotelueschenk@opd.wi.gov

Attorney for Defendant-Appellant

TABLE OF CONTENTS

Page

ISSUE PRESENTED....4

POSITION ON ORAL ARGUMENT AND PUBLICATION....4

STATEMENT OF THE CASE AND FACTS....5

ARGUMENT....8

The state failed to present sufficient evidence to prove that Ms. Wooldridge knowingly possessed methamphetamine. 8

A. Legal standard and standard of review. 8

B. The evidence was insufficient to prove that Ms. Wooldridge knowingly possessed methamphetamine on April 13, 2020. 9

CONCLUSION.... 14

CASES CITED

In re Winship,
397 U.S. 358 (1970).... 8

Kabat v. State,
76 Wis. 2d 224,
251 N.W.2d 38 (1977) ....9 passim

State v. Chentis,
2022 WI App 4, 400 Wis. 2d 441,
969 N.W.2d 482.... 10, 12, 13

State v. Poellinger,
153 Wis. 2d 493,
451 N.W.2d 752 (1990) 8, 9, 10, 12

State v. Smith,
2012 WI 91, 342 Wis. 2d 710,
817 N.W.2d 410 8

United States v. Jeffers,
524 F.2d 253 (7th Cir. 1975) 10

CONSTITUTIONAL PROVISIONS

United States Constitution

Fourteenth Amendment 8

Wisconsin Constitution

Article I, § 1 8

OTHER AUTHORITIES CITED

Wis JI-Criminal 6030 9

ISSUE PRESENTED

> Ms. Wooldridge was the passenger in a car that was stopped by Officer Prinsen on April 13, 2020. Officer Prinsen obtained consent to search that car and located a syringe containing "bloody residue" inside of Ms. Wooldridge's purse. The plunger of the syringe had been pushed down and the officer could not identify the residue inside. The syringe was subsequently sent to the Wisconsin State Crime Laboratory where the "reddish residue" contained inside was collected using a methanol rinse and tested positive for the presence of methamphetamine.
>
> Did the state present sufficient evidence to prove beyond a reasonable doubt that Ms. Wooldridge knowingly possessed methamphetamine on April 13, 2020?

The jury found Ms. Wooldridge guilty of possession of methamphetamine as alleged in the information.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Neither oral argument nor publication is requested. The briefs should adequately set forth the arguments and publication will likely be unwarranted as the issue presented can be decided on the basis of well-established law.

STATEMENT OF THE CASE AND FACTS

On March 9, 2021, the state filed a complaint charging Kelsy R. Wooldridge with possession of methamphetamine. (2:1). The complaint alleged that on April 13, 2020, Officer Prinsen conducted a traffic stop of Ms. Wooldridge's vehicle. (2:2). That traffic stop led to a search of Ms. Wooldridge's purse, in which Officer Prinsen found "a bloody syringe." (2:2). A field test of the syringe "yielded a positive result for the presence of methamphetamine." (2:2).

Ms. Wooldridge entered a not guilty plea to the charge and the case proceeded to a jury trial on May 5, 2022. (9; 56:3). The state called three witnesses at trial: Officer Sawyer Prinsen, Investigator Brandon Bohl, and lab analyst Madison Kniskern.

Officer Prinsen testified first. He informed the jury that, on April 13, 2020, he conducted a traffic stop of a vehicle in which Ms. Wooldridge was a passenger. (47:83-84; App. 6-7). Although he approached the driver's side of the vehicle, Officer Prinsen testified that he observed that Ms. Wooldridge had a shaky voice, did not make eye contact, was fidgeting, and was holding a black purse on her lap. (47:84-85; App. 7-8). Later, he asked Ms. Wooldridge to get out of the car and then asked her for permission to search it. (47:85, 96; App. 8, 19).

Officer Prinsen explained that he began his search of the car by searching the black purse that Ms. Wooldridge had been holding. (47:86; App. 9). Inside the purse, Officer Prinsen "observed one bloody

needle," which he described further by stating, "[t]he syringe I located had a bloody substance inside the tube and on the point of the needle" (47:86; App. 9).

Officer Prinsen testified that he confronted Ms. Wooldridge with the syringe and asked her if she had used methamphetamine. (47:86-88; App. 9-11). Ms. Wooldridge replied that she last used one week prior. (47:88; App. 11). Officer Prinsen did not ask Ms. Wooldridge if she had recently used the syringe or if she knew what was inside of it. (47:98; App. 21). After speaking with Ms. Wooldridge, Officer Prinsen seized the syringe as evidence. (47:89-92, 97; App. 12-15, 20).

On cross-examination, Officer Prinsen clarified that when he first found the syringe the plunger was pushed down and he observed what he described as "bloody residue." (47:97; App. 20). There was no clear liquid inside the syringe, "[j]ust bloody residue," which he agreed generally means a small, or left over, amount. (47:97; App. 20). Further, though he had suspicions, he was not able to tell what substance was in the syringe just by looking at it. (47:99-100; App. 22-23).

Finally, Madison Kniskern, a controlled substances analyst with the Wisconsin State Crime Lab, testified. (47:115; App. 25). She explained the process for testing a syringe for controlled substances, both when a liquid is present and when there is only residue. (47:118, 121-122; App. 28, 31-32). Specifically, she testified that the syringe involved in this case did

not contain any actual liquid, only a "reddish residue," so she used methanol to rinse the syringe. (47:122, 125; App. 32, 35). She then did a "color test" which returned a "faint peach color." (47:122; App. 32). Ms. Kniskern explained that the faint peach color was not a clear result – it was ambiguous as to what the substance was. (47:122-123, 127; App. 32-33, 37). She explained that, from there, she ran a gas chromatography and chromatography-mass spectrometry which identified the presence of methamphetamine. (47:122-123; App. 32-33). Ms. Kniskern informed the jury that she could not determine the amount, only the presence of methamphetamine. (47:123; App. 33).

After Ms. Kniskern's testimony, the state rested and the parties gave closing arguments. (47:128, 147-160). The jury returned a guilty verdict. (30; 47:165).

The court proceeded to sentencing and placed Ms. Wooldridge on probation for one year. (28; App. 3). A judgment of conviction was entered and Ms. Wooldridge subsequently filed a notice of appeal. (28; 59; App. 3-4).

This brief follows.

ARGUMENT

The state failed to present sufficient evidence to prove that Ms. Wooldridge knowingly possessed methamphetamine.

The evidence presented at trial was insufficient to prove beyond a reasonable doubt that, on April 13, 2020, Ms. Wooldridge knowingly possessed methamphetamine. As a result, Ms. Wooldridge's conviction must be vacated.

A. Legal standard and standard of review.

"In order to obtain a conviction, the state must prove every essential element of the crime charged beyond a reasonable doubt." *State v. Ivy*, 119 Wis. 2d 591, 606-607, 350 N.W.2d 622 (1984), A conviction obtained without sufficient evidence is a violation of the defendant's right to due process of law. U.S. Const. Amend. XIV; Wis. Const. Art. I, § 1; *In re Winship*, 397 U.S. 358, 365 (1970).

"The question of whether the evidence was sufficient to sustain a verdict of guilt in a criminal prosecution is a question of law," which this court reviews de novo. *State v. Smith*, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. In doing so, this court will uphold the verdict unless the evidence "is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *Id*. (quoting *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990)). Stated another way, this court is to "decide whether 'any

possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial.'" *Id*., ¶44 (quoting *Poellinger*, 153 Wis. 2d at 506.). Should this court determine that the evidence produced at trial is insufficient, it must order a judgment of acquittal. *Ivy*, 119 Wis. 2d at 608-610.

B. The evidence was insufficient to prove that Ms. Wooldridge knowingly possessed methamphetamine on April 13, 2020.

In order to prove Ms. Wooldridge guilty of possession of methamphetamine, as charged, the state was required to prove, that on April 13, 2020: 1) Ms. Wooldridge possessed a substance; 2) the substance was methamphetamine; and 3) Ms. Wooldridge knew or believed the substance was methamphetamine. *See* WIS JI-CRIMINAL 6030. (31:9-10). The only element at issue in this case is the third element – Ms. Wooldridge's knowledge of the nature of the substance she possessed.

"To convict an individual of possession of a controlled substance, the prosecution must prove not only that the defendant was in possession of a dangerous drug but also that he knew or believed he was." *Kabat v. State*, 76 Wis. 2d 224, 227, 251 N.W.2d 38, 40 (1977). In other words, although there is no minimum amount of a controlled substance necessary to convict an individual of possession, "there must be sufficient facts to establish the defendant's knowledge of the character of the material in his or her

possession." *State v. Chentis*, 2022 WI App 4, ¶¶9, 11, 400 Wis. 2d 441, 969 N.W.2d 482; *See also State v. Poellinger*, 153 Wis. 2d 493, 508, 451 N.W.2d 752, 758 (1990). "[T]he awareness of the defendant of the presence of the narcotic, not scientific measurement and detection, is the ultimate test of the known possession of a narcotic." *Kabat*, 76 Wis. 2d at 228 (citing *United States v. Jeffers*, 524 F.2d 253 (7th Cir. 1975)).

The evidence presented in this case was insufficient to support the necessary finding that Ms. Wooldridge knew that the syringe contained methamphetamine. In *Kabat v. State*, 76 Wis. 2d 224, 251 N.W.2d 38, 40 (1977), a case with comparable facts, the Wisconsin Supreme Court overturned Kabat's conviction for possession of marijuana, finding that, "[u]nder the circumstances of the case it [could not] be said that the presence of the narcotic was reflected in such a form as reasonably imputed knowledge to Kabat that it was marijuana." *Id*. In so holding the court noted that the evidence consisted of a pipe that "contained less than one-half of a gram of ash material." *Id*. at 228-229. The court concluded that "[a] lay person could not be expected to know whether the burnt material in the pipe still contained ingredients of the controlled substance." *Id*. at 229.

Similarly, the methamphetamine in this case was not present in such a form as to reasonably impute knowledge to Ms. Wooldridge that it was, in fact, methamphetamine. The evidence established only that Ms. Wooldridge possessed a used syringe which,

to the naked eye, contained trace amounts of blood. (47:97; App. 20). A lay person would not have known that the bloody residue in the syringe contained some unidentifiable amount of methamphetamine.

The state's evidence consisted of testimony from Officer Prinsen and the lab analyst, Ms. Kniskern. According to Officer Prinsen, when he located the syringe in Ms. Wooldridge's purse, the plunger had been pushed all the way down and it contained only "bloody residue." (47:97; App. 20). He testified that he could not identify the residue just by looking at it. (47:99-100; App. 22-23).

Ms. Kniskern testified that the syringe contained no weighable amount of liquid, only a reddish residue that she could not identify by sight and could not test without doing a methanol rinse to collect. (47:122, 125-126; App. 32, 35-36). Ms. Kniskern further testified that the initial "color test" performed gave an inconclusive result and, while her other tests identified the presence of methamphetamine, she was unable to determine a quantity. (47:122-123; App. 32-33). Finally, she explained to the jury that methamphetamine is not red, so the residue likely contained more than methamphetamine and she could not say how much of the residue was actually methamphetamine. (47:126; App. 36).

Just as in *Kabat*, none of the state's witnesses were able to identify the contents of the syringe by visual examination. *See Kabat*, 76 Wis. 2d at 226.

Further, just as the analyst in *Kabat* had to scrape the residue from the pipe and could not provide the size of the sample, Ms. Kniskern had to use a methanol rinse to collect the unweighable residue from the used syringe and was unable to identify the quantity of methamphetamine. *See Id*. Under these circumstances, the "amount and form of the drug [in the syringe] did not permit the trier of fact to infer that [Ms. Wooldridge] had knowledge of its presence. *See Id.* at 229.

Finally, the facts of this case are readily distinguishable from those in *State v. Poellinger*, 153 Wis. 2d 493, 451 N.W.2d 752 (1990), and *State v. Chentis*, 2022 WI App 4, 400 Wis. 2d 441, 969 N.W.2d 482 – cases in which the state was able to prove knowing possession of trace amounts of a controlled substance. Here, there was no identifiable amount of methamphetamine and Ms. Wooldridge made no admissions that she had used the syringe to consume methamphetamine, nor that she had known the syringe contained methamphetamine in the past. *Contrast with Poellinger*, 153 Wis. 2d at 508-509 (holding that the analyst's testimony that he observed a white powder residue on the threads of the vial, along with Poellinger's admission that she knew the vial contained cocaine at one time, was sufficient to support a finding that she knowingly possessed cocaine). Further, the state presented no circumstantial evidence to support a finding of knowledge; Officer Prinsen did not observe any other evidence of recent drug use, such as intoxication, fresh track marks, or other drug paraphernalia in the purse

or vehicle. *Contrast with Chentis*, 2022 WI App 4, ¶13 (finding the facts that Chentis's vehicle contained drug paraphernalia indicative of heroin use, and his arm had fresh track marks, to be strong circumstantial evidence of Chentis's knowledge that a tin cooker found in the vehicle would contain residual amounts of heroin).

Here, the state had only the fact that the bloody residue found on a used syringe in Ms. Wooldridge's purse tested positive for the presence of methamphetamine. The lab analysts' skill in detecting what was otherwise unobservable cannot be the ultimate determination of Ms. Wooldridge's knowing possession. *See Kabat*, 76 Wis. 2d at 228. The state failed to present evidence on which any jury, acting reasonably, could find beyond a reasonable doubt that Ms. Wooldridge knowingly possessed methamphetamine. Her conviction must be reversed.

CONCLUSION

The state failed to prove, beyond a reasonable doubt, that Ms. Wooldridge knowingly possessed methamphetamine. Accordingly, Ms. Wooldridge respectfully requests that this court reverse the judgment of conviction and sentence and remand to the circuit court with instructions that a judgment of acquittal be entered.

Dated this 27th day of January, 2023.

Respectfully submitted,

Electronically signed by
Kathilynne A. Grotelueschen
KATHILYNNE A. GROTELUESCHEN
Assistant State Public Defender
State Bar No. 1085045

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1770
grotelueschenk@opd.wi.gov

Attorney for Defendant-Appellant

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 2,055 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 27th day of January, 2023.

Signed:
Electronically signed by
Kathilynne A. Grotelueschen
KATHILYNNE A. GROTELUESCHEN
Assistant State Public Defender