

FILED
05-08-2023
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
C O U R T O F A P P E A L S
DISTRICT III

Case No. 2022AP2222 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROGER A. MINCK,

Defendant-Appellant.

AN APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN EAU CLAIRE COUNTY CIRCUIT COURT,
THE HONORABLE HOWARD CAMERON AND
JOHN F. MANYDEEDS, PRESIDING.

**BRIEF AND SUPPLEMENTAL APPENDIX OF
PLAINTIFF-RESPONDENT**

JOSHUA L. KAUL
Attorney General of Wisconsin

WINN S. COLLINS
Assistant Attorney General
State Bar #1037828

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 264-6203
(608) 294-2907 (Fax)
collinsws@doj.state.wi.us

TABLE OF CONTENTS

INTRODUCTION	4
ISSUE PRESENTED.....	4
STATEMENT ON ORAL ARGUMENT AND PUBLICATION.....	5
STATEMENT OF THE CASE	5
A. The Victim’s Disappearance.....	5
B. The Search for the Victim	6
C. The Forensic Evidence.....	9
D. The Trial.....	9
STANDARD OF REVIEW	11
ARGUMENT	12
There was sufficient evidence for the jury to find Minck guilty of hiding a corpse.	12
A. The jury had sufficient evidence to find that Minck hid Thane’s corpse in his brother’s next-door residence.	13
B. The jury had sufficient evidence to find that Minck hid Thane’s corpse in order to conceal his drug trafficking, which Minck does not dispute is a crime.	17
CONCLUSION.....	22

TABLE OF AUTHORITIES

Cases

<i>Cavazos v. Smith</i> , 565 U.S. 1 (2011)	12
<i>State v. Badker</i> 2001 WI App 27, 240 Wis. 2d 460, 623 N.W.2d 142	13
<i>State v. Below</i> , 2011 WI App 64, 333 Wis. 2d 690, 799 N.W.2d 95	13, 18

<i>State v. Bratchett</i> , No. 2018AP2305-CR, 2020 WL 2049119 (Ct. App. Apr. 22, 2020)	5, 18, 20
<i>State v. Damms</i> , 9 Wis. 2d 183, 100 N.W.2d 592 (1960)	20
<i>State v. Kamlager</i> , No. 2006AP1103-CR, 2007 WL 2711671 (Ct. App. Sep. 19, 2007).....	19
<i>State v. Klingelhoets</i> , 2012 WI App 55, 341 Wis. 2d 432, 814 N.W.2d 885	12
<i>State v. Kordas</i> , 191 Wis. 2d 124, 528 N.W.2d 483 (Ct. App. 1995).....	20
<i>State v. Nichols</i> , No. 2008AP940-CR, 2009 WL 818983 (Ct. App. Mar. 31, 2009).....	19
<i>State v. Pinno</i> , 2014 WI 74, 356 Wis. 2d 106, 850 N.W.2d 207.....	19
<i>State v. Poellinger</i> , 153 Wis. 2d 493, 451 N.W.2d 752 (1990)	12, 16
<i>State v. Smith</i> , 2012 WI 91, 342 Wis. 2d 710, 817 N.W.2d 410.....	11, 12, 17
Statutes	
Wis. Stat. § (Rule) 809.22(2)(b)	5
Wis. Stat. § (Rule) 809.23(1)(a)1	5
Wis. Stat. § (Rule) 809.23(3)(b)	19
Wis. Stat. § (Rule) 809.86(4).....	4
Wis. Stat. § 940.02(2)(a)	19
Wis. Stat. § 940.11(2).....	9, 13, 19
Wis. Stat. § 961.41(1)(a)	9
Wis. Stat. § 961.42(1).....	9
Other Authority	
Wis. JI-Criminal 1194 (2013).....	17

INTRODUCTION

The jury had sufficient evidence to find Defendant-Appellant Roger A. Minck guilty of hiding the corpse of victim Thane.¹

Thane stopped answering his phone and effectively disappeared minutes after arriving at Minck's house. One month later, police found Thane's corpse in the attached, next-door residence leased by Minck's brother. Minck's brother had been jailed while Thane was missing and had left his house keys with Minck. Thane had died from a mixed drug toxicity and was found in possession of heroin. His corpse was covered by a tarp and partially wrapped in plastic sheeting. Minck was the only major contributor of DNA on both the tarp and plastic sheeting.

While Thane was missing, Minck claimed that Thane never made it to his house and that he never saw him before he disappeared. He also denied selling oxycodone pills. However, Minck did sell oxycodone pills, and he continued selling them out of his house while police searched for Thane.

The jury reasonably found from this evidence that Minck hid Thane's corpse and that he did so to conceal his ongoing oxycodone trafficking.

ISSUE PRESENTED

Was there sufficient evidence for the jury to find that Minck hid Thane's corpse to conceal his drug trafficking?

The circuit court answered: Yes.

This Court should answer: Yes.

¹ The State uses a pseudonym for the victim. *See* Wis. Stat. § (Rule) 809.86(4).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument because the briefs “fully present and meet the issues on appeal” and “fully develop the theories and legal authorities on each side.” Wis. Stat. § (Rule) 809.22(2)(b).

This Court should consider publishing the opinion. There is little caselaw on the crime of concealing a corpse, and the State found no published opinions on the intent element of the crime. A published opinion could clarify the rule of law regarding the requisite intent. *See* Wis. Stat. § (Rule) 809.23(1)(a)1. The opinion could make clear that the statute requires the State only to prove that the defendant intended to conceal “a” crime by hiding the corpse, not the crime (if any) that caused the victim’s death. It could also explain that the requisite intent can be established even when the fear of criminal liability is “ill-conceived or irrational.” *State v. Bratchett*, No. 2018AP2305-CR, 2020 WL 2049119, ¶ 20 (Ct. App. Apr. 22, 2020) (unpublished) (R-App 3–6).

STATEMENT OF THE CASE

A. The Victim’s Disappearance

In the late afternoon on November 5, 2018, the victim, Thane, told his adoptive son,² Tyrone, that he was going to drive from his home in Gilmanton to Minck’s house in Eau Claire to acquire some heroin from Minck.³ (R. 129:84, 89.) Thane had a heroin addiction. (R. 129:85.) After Thane had left, Tyrone spoke to him on the phone at 5:14 p.m. (R. 129:91.)

² At trial, Tyrone explained that Thane did not legally adopt him, but that Thane was his de facto father with whom he lived at the time of Thane’s death. (R. 129:84.)

³ The State also uses a pseudonym for the victim’s adoptive son.

Thane never came home or answered his phone again. (R. 129:92.)

Tyrone repeatedly called Thane after 5:14 p.m., but all calls went to voicemail. (R. 84:7–8; 129:92, 115.) A coworker filed a missing person report the next day, November 6, when Thane uncharacteristically failed to appear for his job as a rural letter carrier for the U.S. Postal Service. (R. 129:107, 109.)

On November 7, police found Thane's car near the Lake Altoona Dam. (R. 2:2; 125:9.) The car was unoccupied and lacked anything of evidentiary value. (R. 125:9, 11.) The amber light that Thane affixed to his car roof as part of his job was missing and never recovered. (R. 125:11, 12.) The Lake Altoon Dam is a three-to-four-minute drive from Minck's residence. (R. 125:10.)

B. The Search for the Victim

Detectives interviewed Minck at his home on November 13, 2018. (R. 2:2.) Thane still had not been found. (R. 2:2.) The interview was recorded on video and later transcribed. (R. 73; 92; 125:22–24; 129:117–18.) Minck claimed that Thane was supposed to arrive at his house between 4:00 and 6:00 p.m. to drive him to a scrapyard where Minck planned to buy a car. (R. 92:1–2.) According to Minck, Thane never showed up, and Minck never heard from him again. (R. 92:2.) He claimed he tried calling Thane but never reached him. (R. 92:3.)

The detectives also asked Minck about the drug habits of Daniel Schofield, a longtime friend of Thane with whom Minck was familiar. (R. 92:12; 129:101.) Minck suspected that Schofield would take “a couple pills here and there” but didn't “think he [was] into anything.” (R. 92:12.) He expressly denied ever “hook[ing] him up with pills.” (R. 92:12.) Five days later

on November 18, Minck sold Schofield 60 oxycodone pills for \$300 at his house. (R. 129:102–03.)

During the interview, Minck agreed to let the detectives walk through his house. (R. 92:5–6; 129:118.) They found no trace of Thane. (R. 129:118.)

Importantly, the detectives did not walk through the separate residence attached to Minck's home. (R. 125:22.) Minck lived in one-half of a duplex, and his brother, Kenneth, lived in the other half. (R. 125:22.) As will be seen, the police ultimately found Thane's corpse in Kenneth's residence. (R. 128:13–14.)

Kenneth was jailed from November 2, 2018, to December 20, 2018, leaving his home unoccupied for the entire period in which Thane was missing. (R. 125:33–34.) Before going to jail, Kenneth threw his house keys on Minck's coffee table in front of Minck's girlfriend. (R. 129:97–98.)

The police obtained Thane's cell phone records. (R. 129:111.) The cell towers utilized by Thane's phone on November 5 confirmed that he drove from Gilmanton to Eau Claire in the late afternoon. (R. 84:2–6; 129:112–14.) Thane made his last outgoing phone calls at 4:57, and 4:59 p.m.—both to Minck. (R. 84:7; 125:50.) He also accepted a call from Minck at 4:58 p.m. (R. 84:7.) As Tyrone stated, Thane spoke with Tyrone at 5:14 p.m. and then never answered his phone again. (R. 84:7–8; 129:91–92.) Minck, however, never called Thane after 4:59 p.m., which contradicted what he told the detectives. (R. 84:7–8; 92:3; 125:30–31; 129:115.)

A camera at an intersection one-and-a-half blocks from Minck's home captured Thane driving his car through the intersection at 5:25 p.m. (R. 125:12–13, 16–18.) The car still had the distinctive amber light attached to the roof. (R. 82:1; 125:17.) Thane drove toward Minck's home. (R. 125:17–18.)

With this information, the police again interviewed Minck on December 6, 2018, this time at the Sheriff's Office. (R. 2:3; 125:38; 129:119.) Minck stuck to his original story and denied any knowledge of Thane's whereabouts. (R. 93:15–16, 23.) However, he did admit selling pills (R. 93:8, 24, 25, 33), which he called a “hustle” (R. 93:27). He reported receiving a supply of pills on November 14 that he sold in the ensuing days. (R. 93:27.) He presumably sold pills out of that supply to Schofield on November 18. (R. 129:102.)

At the interview's conclusion, the detectives told Minck that they would be searching his and his brother's home. (R. 93:33–34.) Minck tried to persuade them not to search his brother's home because “no one's been over there.” (R. 93:34.) He denied possessing Kenneth's house keys. (R. 93:34.)

In Minck's home, police officers recovered a glass pipe with methamphetamine residue on it and several prescription bottles—some bearing Minck's name, some bearing his girlfriend's name, and some bearing no name at all. (R. 125:35–36; 128:43–44.) They observed two flat-screen televisions in the house. (R. 125:36–37.)

Without the keys to Kenneth's half of the duplex, the police attempted to gain entry through a locksmith company, but that effort proved unsuccessful. (R. 125:37–38; 129:131.) One detective went around the back and found an unlocked window that he opened. (R. 129:131–32.) Inside, he saw a green tarp on the floor mostly covering a corpse. (R. 129:132.) The face, however, was visibly exposed and positively identified as Thane. (R. 129:132, 134.)

The police eventually gained entry to Kenneth's home. (R. 128:12–13; 129:133–34.) In the entryway, a broken flat-screen television had been left on the ground. (R. 128:22.) Under the lower half of Thane's corpse, police recovered a piece of plastic sheeting, along with the tarp. (R. 128:15, 23.)

C. The Forensic Evidence

When Thane's left sock was removed at the autopsy, a small baggie containing a tan substance fell out. (R. 128:32.) This substance consisted of heroin, fentanyl, and acetyl fentanyl. (R. 128:41–42.)

Thane died from mixed drug toxicity. (R. 128:96.) His blood had a fentanyl concentration of 42.3 nanograms per milliliter (R. 95:6; R. 128:97), a “significantly elevated level” (R. 128:97). This level of fentanyl, alone, could have caused Thane's death. (R. 128:100.) The toxicology tests also detected acetyl fentanyl, methamphetamine, amphetamine, morphine, nicotine, cotinine, and oxycodone. (R. 95:6–8; 128:98.) The presence of acetyl fentanyl indicated that Thane had used an illicit, non-therapeutic source of fentanyl. (R. 128:98.)

DNA testing was conducted on both the tarp and plastic sheet found with Thane's corpse. (R. 128:56.) The DNA analyst compared four “swabbings” from the edges of those items to DNA samples from Thane, Minck, and Minck's girlfriend. (R. 128:56–58.) The tarp and plastic sheet each had one swabbing with the same conclusive result—a three-person mixture in which Minck was the major contributor and Thane and Minck's girlfriend were excluded as major contributors. (R. 128:59–61.) The other swabbings did not return results suitable to determine a potential contributor. (R. 128:64.)

D. The Trial

Minck proceeded to a jury trial, charged with hiding a corpse under Wis. Stat. § 940.11(2), delivering oxycodone, a Schedule II narcotic, under Wis. Stat. § 961.41(1)(a), and maintaining a place for the purpose of trafficking oxycodone under Wis. Stat. § 961.42(1). (R. 126:12–16.)

Thane's adoptive son Tyrone, brother Kenneth, and drug customer Schofield testified at trial. The trial court⁴ admitted Thane's statement to Tyrone that he planned to drive to Minck's to acquire heroin for its truth pursuant to the statement against penal interest exception to hearsay. (R. 129:87–88.)

Police officers and detectives testified about the search for Thane. The videos of Minck's interviews with detectives, the traffic camera footage showing Thane driving toward Minck's house, and Thane's phone records were shown to the jury and admitted into evidence. (R. 125:16–18, 26, 28, 40–42, 47–48; 129:111–15.)

The forensic pathologist, the DNA analyst, and the drug analyst testified about the conclusions they reached from the tests they conducted. (R. 128:42, 44, 59–61, 96–98.)

Minck elected to testify after waiving his right against self-incrimination at a colloquy. (R. 125:61.) He maintained that Thane was supposed to drive him to a scrapyard to buy a car, but that Thane never appeared. (R. 125:64–65.) He testified that the tarp and plastic sheeting bore his DNA because he owned them and used them for chores. (R. 125:67.) He denied any involvement in Thane's death or moving his corpse. (R. 125:68.)

On cross-examination, Minck admitted to obtaining oxycodone pills from a third party without a subscription and selling them. (R. 125:79.) He confirmed that he sold ten pills to Thane two weeks before he went missing and that he sold pills to Schofield around November 18 following Thane's

⁴ Although the Honorable John F. Manydeeds was the scheduled trial court judge and handled all the pre-trial matters and hearings, he was unable to preside at the last moment. (R. 129:4.) The Honorable Howard Cameron, a reserve judge from St. Croix County, presided over trial. (R. 129:4.)

disappearance. (R. 125:79–80.) Both transactions occurred at his house. (R. 125:80.)

Minck also shared that he had loaned Kenneth one of his two flat-screen televisions because Kenneth had broken his own flat-screen television. (R. 125:72–73.) In closing, the State argued that Minck clearly had access to his brother's residence because when police found Thane's corpse, only the broken flat-screen television remained in Kenneth's house. (R. 126:30.). Minck's house had two flat-screen televisions. (R. 126:30.)

The jury found Minck guilty of all three counts: (1) hiding a corpse; (2) delivery of schedule I or II narcotics; and (3) maintaining a drug trafficking place. (R. 124; 126:54.)

On Counts 1 and 2, the sentencing court⁵ imposed an aggregate sentence of 12 years of initial confinement followed by 10 years of extended supervision. (R. 115:42–43.) On Count 3, the sentencing court imposed a consecutive sentence of one-and-a-half years of initial confinement and two years of extended supervision, which it stayed to impose a consecutive three-year term of probation. (R. 115:43.)

Minck now appeals directly from the judgment of conviction on Count 1, arguing that the jury lacked sufficient evidence to find him guilty of hiding a corpse.

STANDARD OF REVIEW

This Court reviews whether the evidence was sufficient to support the conviction *de novo*, but its review is highly deferential to the verdict. *State v. Smith*, 2012 WI 91, ¶ 24, 342 Wis. 2d 710, 817 N.W.2d 410. This Court must uphold the verdict unless, after viewing the evidence in the light most

⁵ Judge Manydeeds returned to this case for sentencing and is listed on the judgment of conviction from which this appeal arises. (R. 115:1; 124.)

favorable to the State and the conviction, it determines that no rational trier of fact could have found guilt beyond a reasonable doubt. *Id.*; *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

ARGUMENT

There was sufficient evidence for the jury to find Minck guilty of hiding a corpse.

A defendant “bears a heavy burden” when challenging the sufficiency of the evidence to support a conviction. *State v. Klingelhoets*, 2012 WI App 55, ¶ 10, 341 Wis. 2d 432, 814 N.W.2d 885. The verdict may be reversed only when “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.’” *Smith*, 342 Wis. 2d 710, ¶ 24 (quoting *Poellinger*, 153 Wis. 2d at 507).

The appellate court “consider[s] the evidence in the light most favorable to the State.” *Smith*, 342 Wis. 2d 710, ¶ 24. The verdict must be upheld “if there is any reasonable hypothesis that supports it.” *Id.* When more than one inference can reasonably be drawn from the evidence, the inference that supports the verdict controls. *Id.* ¶ 33; *accord Cavazos v. Smith*, 565 U.S. 1, 7 (2011) (per curiam). “[A]n appellate court must consider the totality of the evidence when conducting a sufficiency of the evidence inquiry.” *Smith*, 342 Wis. 2d 710, ¶ 36.

The trier of fact possesses exclusive responsibility for determining witness credibility and weighing the evidence. *Poellinger*, 153 Wis. 2d at 504. “It is the function of the trier of fact, and not of an appellate court, to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Id.* at 506. Only when the “relied upon evidence” is “inherently or patently incredible—that kind of evidence which conflicts

with the laws of nature or with fully-established or conceded facts”—will this Court substitute its judgment for the trier of fact’s. *State v. Below*, 2011 WI App 64, ¶ 3, 333 Wis. 2d 690, 799 N.W.2d 95.

A person commits the crime of hiding a corpse if he: (1) hides a corpse; (2) with the intent to conceal a crime. Wis. Stat. § 940.11(2).⁶ Minck argues that there was insufficient evidence to support either element. He is wrong. Sufficient evidence established that Minck hid Thane’s corpse and that he did it in order to conceal his oxycodone trafficking.

A. The jury had sufficient evidence to find that Minck hid Thane’s corpse in his brother’s next-door residence.

Minck contends that the jury had insufficient evidence to find that he hid Thane’s corpse. (Minck’s Br. 15–19.)

The statute does not define “hides.” In *State v. Badker*, this Court adopted the ordinary and accepted meaning of hide: “to put or keep out of sight.” 2001 WI App 27, ¶ 25, 240 Wis. 2d 460, 623 N.W.2d 142 (citation omitted). Minck does not contest that Thane’s corpse was hidden—nor could he. (Minck’s Br. 18.) Thane’s corpse was missing for a month and found in an unoccupied and locked residence covered by a tarp.

Minck argues only that the State failed to prove that he was the person who hid Thane’s corpse. (Minck’s Br. 16–19.) This argument fails. The jury had a surfeit of evidence to find that Minck hid Thane’s corpse.

⁶ A person can hide a corpse for other purposes and still be found guilty of hiding a corpse, *see* Wis. Stat. § 940.11(2), but hiding a corpse with the intent to conceal a crime is the theory that applies in this case.

The evidence unequivocally placed Thane at Minck's home when he disappeared around 5:30 p.m. on November 5, 2018. Thane told his adoptive son, Tyrone, that he was driving to Minck's to acquire heroin. (R. 129:84, 89.) Thane's phone utilized cell towers that tracked his movement from his house in Gilmanton to Minck's house in Eau Claire. (R. 84:2–6; 129:112–14.) Thane had his last phone call at 5:14 p.m. with Tyrone. (R. 84:7; 129:91.) The traffic camera at the intersection one-and-a-half blocks from Minck's home showed Thane driving his car with its distinctive amber light toward Minck's home at 5:25 p.m. (R. 82:1; 125:12–13, 16–18.) By 5:31 p.m., Thane had stopped accepting calls. (R. 84:7–8; 129:92.)

After 5:31 p.m., Thane went missing for a month. Many people called Thane repeatedly in the 36 hours after his disappearance but failed to reach him. (R. 84:7–8.) Minck was not one of these callers, even though he told police that he was and even though he spoke on the phone with Thane at 4:57, 4:58 and 4:59 p.m. (R. 84:7–8; 92:3.)

Police found Thane in the unoccupied residence of Minck's brother, Kenneth—the other half of the duplex in which Minck lived. (R. 125:22; 128:13–14.) Thane had died from mixed drug toxicity with a very high concentration of illicitly obtained fentanyl in his system (R. 128:96–98). He had a baggie of heroin in his sock. (R. 128:32, 41–42.)

Thane's corpse had been covered in a tarp and partially wrapped in plastic sheeting. (R. 128:14–16, 23.) At trial, Minck admitted that he owned both items. (R. 125:67.) DNA testing revealed Minck to be the only major contributor of DNA on the edges of both items, where a person would have grabbed them. (R. 128:60–61.) The two other most likely candidates for handling the items—Minck's girlfriend and Thane himself—were excluded as major contributors. (R. 128:59–60, 61.)

Minck had access—exclusive access, as far as the trial evidence indicated—to his brother’s residence for the month in which Thane was missing. Kenneth was jailed prior to Thane’s disappearance and not released until after police found his corpse. (R. 125:33–34.) Kenneth testified that he had left his house keys on Minck’s coffee table in front of Minck’s girlfriend. (R. 129:97–98.) Minck denied possessing these keys (R. 93:34), but the flat-screen televisions belied his claim that he lacked access. Minck stated at trial that he had given Kenneth one of his two flat-screen televisions after Kenneth broke his. (R. 125:72–73) However, when police found Thane’s corpse, Kenneth’s home had only a broken flat-screen television. (R. 128:22.) Minck’s house had two working flat-screen televisions. (R. 125:36–37.) Minck obviously must have retrieved his second flat-screen television from Kenneth’s residence while Kenneth was in jail.

Further, Minck betrayed his consciousness of guilt at the end of his second interview with detectives. Although unbothered by a search of his home, he attempted to persuade the detectives not to search his brother’s residence. (R. 93:34.) Had he truly lacked access to Kenneth’s residence, he would have had no reason to fear a search of it.

In sum, the evidence conclusively placed Thane at Minck’s house when he disappeared. One month later, police found Thane’s corpse next door in Kenneth’s residence. Kenneth left Minck with his house keys before going to jail, and Minck clearly used them to retrieve his second flat-screen television. Minck admitted owning the tarp and plastic sheet used to cover Thane’s corpse, and he was the only major contributor of DNA on both items. The jury could easily find beyond a reasonable doubt from this evidence that Minck hid Thane’s corpse.

Minck faults the evidence for failing to prove that he had exclusive access to Kenneth’s residence. (Minck’s Br. 16, 18.) He cites the unlocked window found in Kenneth’s

residence to assert that anyone could have moved Thane's corpse into Kenneth's home. (Minck's Br. 16, 18.)

However, the State did not need to show Minck's exclusive access (although it made a strong showing that he did). It needed to prove only that Minck had access so that he could have moved Thane's corpse. The State met that burden. The jury could reasonably accept Kenneth's testimony that he left his house keys with Minck and infer that Minck used the keys to fetch his second flat-screen television from Kenneth's residence. Minck's negative reaction to being told that the police planned to search Kenneth's home buttressed that inference. The jury was free to infer from this evidence that Minck had access to Kenneth's residence and to reject Minck's speculative theory of innocence as unreasonable. *See Poellinger*, 153 Wis. 2d at 506. Any doubt of Minck's involvement based on the theoretical possibility of an unknown person sneaking Thane's corpse in through a window, using Minck's tarp and plastic sheet to cover the corpse, and somehow depositing Minck's DNA on those items, would not have been reasonable.

Minck contends that the State improperly invited the jury to speculate outside the record by arguing that Minck retrieved his second flat-screen television from Kenneth's home. (Minck's Br. 17–18, 19.) He is incorrect. Police officers who executed the two searches established that Kenneth's residence had one broken flat-screen television and that Minck's residence had two working flat-screen televisions. (R. 125:36–37; 128:22.) Minck testified that he gave Kenneth one of his two flat-screen televisions after Kenneth broke his. (R. 125:72–73.) This direct evidence established the basis for this particular inference advanced by the State.

Minck also asserts that the jury was obligated to discount the presence of his DNA on the tarp and plastic sheet because he testified that he owned and used them. (Minck's Br. 18.) He believes that the jury should have concluded that

his DNA must have come from innocent activities. (Minck's Br. 18.)

The jury was not obligated to accept Minck's spin on the DNA evidence. It was free to determine that the DNA test results, when viewed in the totality of the evidence, showed that Minck used the tarp and plastic sheet to hide Thane's corpse. *See Smith*, 342 Wis. 2d 710, ¶ 31.

Accordingly, sufficient evidence supported the jury's finding that Minck hid Thane's corpse, as required to find him guilty of hiding a corpse.

B. The jury had sufficient evidence to find that Minck hid Thane's corpse in order to conceal his drug trafficking, which Minck does not dispute is a crime.

Minck also argues that the jury lacked sufficient evidence to find that he hid Thane's corpse to conceal a crime. (Minck's Br. 19–23.)

The trial court properly instructed the jury on the elements necessary to find Minck guilty of hiding a corpse. (R. 126:12–13); *see* Wis. JI-Criminal 1194 (2013). The court told the jury that intent was to be found from Minck's "acts, words, or statements along with all the facts and circumstances in this case bearing upon intent." (R. 126:13.) The facts and circumstances revealed that Minck hid Thane's corpse to conceal the drug transactions he conducted out of his house.

The very fact that Minck hid Thane's corpse for a month while adamantly denying any knowledge of his whereabouts presents powerful evidence of an intent to hide criminal conduct. Minck locked Thane's corpse in his brother's home and covered it with a tarp. (R. 125:37–38; 128:14–15; 129:131–32.) He removed the amber light from Thane's car, transported the car to the Lake Altoona Dam—only a three-to-four-minute drive from his house—and abandoned it there.

(R. 125:9–11.) He then lied to police for a month—even when confronted with evidence that undermined his story. (R. 92:2–4; 93:15–16, 23.) Minck did not at trial, and does not here, offer any rational explanation for his duplicitous conduct. An innocent explanation is not apparent.

Minck’s drug dealing, on the other hand, is an undisputed fact that readily explains his concealment of Thane’s corpse. (*See* Minck’s Br. 23.) At trial, Minck confirmed that he sold oxycodone pills to Schofield around November 18 and that he gave Thane ten pills two weeks prior to his death. (R. 125:79–80.) He had already admitted to selling oxycodone from his house prior to trial in his second interview with detectives, calling it his “hustle.” (R. 93:24, 27–28.) Consistent with these admissions, police found various empty pill bottles in Minck’s house, including some that lacked any labels. (R. 125:36.) They also found a pipe used to smoke methamphetamine. (125:35.) Notably, Thane died with oxycodone, methamphetamine, and amphetamine (a metabolite of methamphetamine) in his system along with fentanyl. (R. 128:98–99.) Minck does not contest that selling these drugs was a crime.

The jury could reasonably find that Minck feared that Thane’s drug-induced death at his house would invite police scrutiny that would uncover his illegal drug enterprise and that he accordingly hid Thane’s corpse so that he could continue selling oxycodone out of his house after Thane’s death. This finding is not “patently incredible” as required to be disturbed on appeal. *Below*, 333 Wis. 2d 690, ¶ 3; *see State v. Bratchett*, No. 2018AP2305-CR, 2020 WL 2049119, ¶ 21 (Ct. App. Apr. 22, 2020) (unpublished) (upholding mutilation of a corpse conviction because the jury “could reasonably infer that [the defendant] burned [the victim’s] body with the intent

to conceal the crime of delivery of a controlled substance” after the victim died by an oxycodone overdose) (R-App. 3–6).⁷

Minck contends that the only crime that could be concealed by moving Thane’s corpse would be first-degree reckless homicide from providing Thane with the illicit fentanyl that caused his death. (Minck’s Br. 19–20.) *See* Wis. Stat. § 940.02(2)(a). This argument depends on his unsupported assumption that a conviction for hiding a corpse can arise only if the defendant is responsible for the death of that person. (Minck’s Br. 20–22.)⁸ No such requirement exists.

The statute requires only that a defendant hide a corpse “to conceal *a* crime.” Wis. Stat. § 940.11(2) (emphasis added). It does not specify that the defendant be concealing a crime related to the death of the person being moved. Indeed, the crime to be concealed need not even have been committed by the person moving the corpse. *See State v. Pinno*, 2014 WI 74, ¶¶ 25–26, 356 Wis. 2d 106, 850 N.W.2d 207 (recounting that defendant’s conviction arose from hiding the corpse of her son’s murder victim). The jury could find Minck guilty of hiding a corpse based on his intent to conceal his drug trafficking even if the drug trafficking did not cause Thane’s death.

Moreover, the jury could have found that Minck did, in fact, hide Thane’s corpse to conceal his involvement in his

⁷ Unpublished opinions issued on or after July 1, 2009, that are authored by a member of a three-judge panel may be cited for their persuasive value. Wis. Stat. § (Rule) 809.23(3)(b).

⁸ Minck’s argument relies in part on unpublished opinions that may not be cited on appeal. (Minck’s Br. 21–22.) Both *State v. Kamlager*, No. 2006AP1103-CR, 2007 WL 2711671 (Ct. App. Sep. 19, 2007) and *State v. Nichols*, No. 2008AP940-CR, 2009 WL 818983 (Ct. App. Mar. 31, 2009) predate July 1, 2009, making them uncitable even for their persuasive value. *See* Wis. Stat. § (Rule) 809.23(3)(b).

death. Admittedly, the jury was not instructed on first-degree reckless homicide, and the State did not argue that Minck aimed to conceal that crime. Nevertheless, the record provided the jury a basis to find that Minck hid Thane's corpse because he feared being held responsible for Thane's death.

Thane had a heroin addiction and told Tyrone that he was going to see Minck to acquire heroin. (R. 129:85, 89.) The traffic camera by Minck's house established that Thane made it to Minck's house just before he went missing. (R. 125:12–13, 16–18.) Police found Thane in Minck's brother's house, the other half of the duplex in which Minck lived. (R. 125:22; 128:13–16.) Thane died from mixed drug toxicity (R. 128:96.) He had a very high level of fentanyl in his blood that could have independently caused his death. (R. 128:97.) The presence of acetyl fentanyl signaled that the fentanyl came from an illicit source. (R. 128:98.) He possessed a baggie of a tan substance consisting of heroin, fentanyl, and acetyl fentanyl when he died. (R. 128:32, 42.) He also died with oxycodone, the drug that Minck admitted selling, and methamphetamine, the drug residue found on Minck's pipe, in his blood. (R. 128:98.)

Even if Minck had not provided Thane with any drugs, this evidence provided the jury a basis to find that Minck would still have feared being held criminally responsible for Thane's death. The statute requires only "an intent, however ill-conceived or irrational, to conceal a crime." *Bratchett*, 2020 WL 2049119, ¶ 20 (R-App. 5); *see also State v. Kordas*, 191 Wis. 2d 124, 130, 528 N.W.2d 483 (Ct. App. 1995) (holding that defendant could commit attempted receipt of stolen property by intending to receive stolen property, even if that property was not actually stolen); *State v. Damms*, 9 Wis. 2d 183, 192, 100 N.W.2d 592 (1960) ("[T]he fact, that the gun was unloaded when [the defendant] pointed it at his wife's head and pulled the trigger, did not absolve him of [attempted

murder], if he actually thought at the time that it was loaded.”).

The jurors did not need to be well-versed in the different gradations of homicide to understand intuitively that a drug trafficker like Minck might panic when a visitor to his home suffered a drug-induced death, particularly if the visitor had consumed the drug trafficker’s primary product—oxycodone—just before his death. Thus, the jury could have found that Minck hid Thane’s corpse to avoid even his subjectively perceived risk of being held criminally liable for Thane’s death.

Finally, Minck argues that he could not have intended to conceal his oxycodone trafficking because he admitted it to the detectives and at trial. (Minck’s Br. 22–23.) Minck cites no authority for this proposition that a defendant can preclude a conviction for hiding a corpse by confessing, at any time, to the crimes that were previously concealed by hiding the corpse.

Minck’s argument is equivalent to arguing that one cannot be guilty of burglary if he later returns items he stole during the burglary. The intent to steal the items at the time of breaking and entering is determinative, regardless of what happens to the items later or even if the intended theft is successful. Likewise here, only Minck’s intent when hiding the corpse matters, not whether his hiding of the corpse successfully concealed the crime he intended to conceal. Minck’s subsequent confessions did not alter the fact that he was concealing his oxycodone trafficking at the time he hid Thane’s corpse. In his first interview with the detectives after Thane was reported missing, Minck falsely denied selling drugs. (R. 92:2–4, 12.) Following that interview, Minck sold oxycodone to Schofield. (R. 129:102–03.) He did not admit to selling oxycodone until December 6. (R. 93:24, 27–28.) He cannot escape criminal liability for hiding Thane’s corpse

simply by confessing to the crimes he concealed once further investigation exposed his lies.

For these reasons, the evidence presented at trial provided the jury a sufficient basis to find that Minck hid Thane's corpse to conceal his drug trafficking.

CONCLUSION

This Court should affirm the judgment of conviction.

Dated: May 8, 2023

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Winn S. Collins
WINN S. COLLINS
Assistant Attorney General
State Bar #1037828

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 264-6203
(608) 294-2907 (Fax)
collinsws@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 5216 words.

Dated: May 8, 2023.

Electronically signed by:

Winn S. Collins
WINN S. COLLINS
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated: May 8, 2023.

Electronically signed by:

Winn S. Collins
WINN S. COLLINS
Assistant Attorney General