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COURT OF APPEALS**

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,
Plaintiff-Respondent,

vs. Appeal No. 2022AP002222 CR
Case No. 2020CF001565
(Eau Claire County)

ROGER A. MINCK,
Defendant-Appellant.

APPELLANT'S REPLY BRIEF

Appeal from the Judgment of Conviction and Sentence
entered in
Eau Claire County Circuit Court
Honorable John F. Manydeeds, presiding

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COMPLIANCE CERTIFICATE

I hereby certify that this Reply Brief conforms to the form and length requirements of Rule 809.19(8)(b), (bm) and (c) in that it is typewritten using a proportional font. The length of this Reply Brief is 2,647 words.

Dated this 22nd of June 2023.

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ARGUMENT

I. THE STATE’S APPLICATION OF WIS. STAT. § 940.11(2) IS UNPRECEDENTED AND CONFLICTS WITH PRIOR CASES.

The State argued to the jury that Minck hid T.C.’s body “to conceal a crime, specifically, his illegal Oxycodone sales”. (R. 129; p.72). T.C.’s cause of death was an overdose of Heroin and Fentanyl. (R. 128; pp. 97-98). Recovered from T.C.’s body was Heroin and Fentanyl. (R. 128; p. 42). Whoever delivered the heroin and Fentanyl to T.C. would be guilty of a Len Bias-type homicide pursuant to Wis. Stat. § 940.02(2)(a). This is the crime that would have been concealed by hiding T.C.’s corpse. The application of Wis. Stat. § 940.11(2) in this manner is consistent with Wisconsin case law.

In Appellant’s Brief, three cases were cited to demonstrate where the State charged and convicted a defendant pursuant to Wis. Stat. § 940.11(2) and in all three

cases the corpse provided evidence of a crime and thusly hiding the corpse was concealing evidence of a crime. (Appellant's Brief at 20-22). The State failed to show how the evidence of T.C.'s heroin overdose concealed Minck's Percocet trade and also failed to cite to any case that applied Wis. Stat. § 940.11(2) to a crime that the corpse did not provide evidence of. Instead, the State cited to cases that support Minck's contention that for the statute to apply, the corpse needed to provide evidence of the crime being concealed. In *State v. Bratchett*, No. 2018AP2305-CR, 2020 WL 2049119 (unpublished opinion), the defendant argued that "no reasonable person would believe that burning [the body] would, in fact, conceal that crime [of delivery of a controlled substance]." (State's App pp. 3-6). The autopsy revealed that the victim had died before the fire was set and that the cause of death was an overdose of oxycodone and alprazolam. A search of the defendant's residence revealed "tools of drug dealing" and over 600 pills including oxycodone and alprazolam. The court noted that "[t]here is

only a requirement that there be an intent, however ill-conceived or irrational, to conceal a crime.” Nevertheless, the appellate court found that the defendant burned the body to conceal the crime of delivery of a controlled substance. (*Id.*). The State also cited *State v. Pinno*, 2014WI 74, 356 Wis. 2d 106, 850 N.W.2d 207 (2014) where the defendant was charged pursuant to Wis. Stat. § 940.11(1) as a party to the crime for transporting the body of her son’s girlfriend after he had killed her to a friend’s house where the body was burned and the ashes dumped into Lake Winnebago. *Id.* at ¶ 25. (Case was on appeal for the issue of whether the defendant was denied a public criminal trial as provided by the sixth amendment). Here again, the intent was to assist in concealing her son’s homicide by transporting and mutilating the body.

As argued in Appellant’s Brief, Wis. Stat. § 940.11(2) has only been applied when the hiding of a corpse concealed evidence of a crime. The State has failed to cite to any case

where the hidden corpse did not disclose evidence of a defendant's crime pursuant to Wis. Stat. § 940.11(2). The State counters that the statute only requires “a crime”. (State's Brief at 19). Wis. Stat. § 940.11(2) states as follows:

(2) Whoever hides or buries a corpse, with intent to conceal a crime or avoid apprehension, prosecution, or conviction for a crime or notwithstanding s. 946.90(2) or (3), 946.91(2), 946.92, or 946.93(2) or (3) with intent to collect benefits under the assistance program for families with dependent children administered under ss. 49.141 to 49.161, the Medical Assistance program administered under subch. IV of ch. 49, or the food stamp program, as defined in s. 49.79(1) (c), is guilty of a Class F felony.

Clearly the plain language of the statute is that the corpse would have an evidentiary connection with “a crime”. To follow the State's reasoning that any crime can be alleged because a defendant's intent would be “ill-conceived or irrational” to conceal the crime would render absurd results. *See Keith v. Keith-Hansen*, 362 Wis. 2d 540, 865 N.W.2d 885 (Ct. App. 2015) “the canon of statutory construction that, whenever possible, statutes should be interpreted to avoid

unreasonable or absurd results.” *Citing Hines v. Resnick*, 2011 WI App 163, ¶ 12, 338 Wis.2d 190, 807 N.W.2d 687. Rather, because it would be impossible to enumerate all of the different homicides or other crimes that would have an evidentiary connection with a corpse, the drafters of the statute used the general term, crime, to ensure inclusion of all possible crimes that would have an evidentiary link to the corpse.

The State contends that hiding a corpse does not have to be linked to the death of that person. (State’s Brief at 19). As shown in Appellant’s Brief, Wis. Stat. § 940.11(2) has only been applied in cases where there is a direct link to a homicide. (Appellant’s Brief at 20-22). In this case, there is no dispute that T.C. was a homicide victim pursuant to Wis. Stat. § 940.02(2)(a). (Appellant’s Brief at 19-20)

In *State v. Hicks*, 864 N.W.2d 153, 160 (Minn. 2015), the Minnesota Supreme Court determined that concealing a body

after a homicide was part of the same behavioral incident as the homicide itself. The court explained that Minnesota has "long recognized that a defendant's conduct in concealing a crime is part of the same behavioral incident as the underlying offense." *Id.* Thus, the dissent's claim that Hicks's concealment of Rush's body necessarily constitutes a separate offense is without merit. *Id.* at 161. However, the *Hicks* court did find that concealing the body constituted an aggravating factor for sentencing. *Id.* at 163. Clearly, other jurisdictions have found that the hiding of a homicide victim's body is linked to the homicide crime.

In this case, there is no dispute that T.C.'s corpse revealed evidence of a homicide. (Appellant's Brief at 19-20). There also is no dispute that the perpetrator of T.C.'s homicide would have had a motive to hide T.C.'s corpse. The State presented no evidence of Minck delivering heroin/fentanyl to T.C. The State even conceded that Minck did not sell heroin. (R. 125; p. 90). As such, Wis. Stat. § 940.11(2) does not

apply in this case and the conviction of Minck hiding a corpse should be vacated.

II. THE STATE RELIES ON ERRONEOUS AND NONEXISTENT FACTS IN AN ATTEMPT TO SHOW THAT EVIDENCE PROVED BEYOND A REASONABLE DOUBT THAT MINCK HID THE CORPSE OF T.C.

As shown in Appellant's Brief, the appellate court must be satisfied that the finder of fact on the credible evidence submitted could find the defendant guilty beyond a reasonable doubt. *State v. Stevens*, 26 Wis.2d 451, 464, 132 N.W.2d 502 (1965). Minck submits that the evidence submitted falls short of the State's burden of proof.

First, the State argues that Minck falsely denied selling drugs in his first interview with the police. (State's Brief at 21). The State is incorrect. What Minck stated to the police at that time was that he had not sold drugs to Schofield. (R. 92; lines 572-573). The detective asked Minck "Have, have you hooked him (Schofield) up with

pills?” Minck answered. “Nope.” (*Id.*). Minck did not deny selling drugs as asserted by the State. Minck did sell Schofield 60 pills six days later. (R. 129; p. 102). Schofield testified at trial and there was no testimony that Minck had ever sold Schofield any pills prior to this one exchange. (R. 129; pp. 101-105).

The State claims that the trial evidence showed that Minck had exclusive access to his brother’s residence. (State’s Brief at 15). At trial Minck’s brother testified that on November 2, 2018 he was drunk and being arrested in Minck’s residence and he threw his keys on the coffee table while C.L. was sitting on the couch and Minck was not present. (R. 129; pp. 97-99). The State’s statement that “Kenneth’s testimony that he left his house keys with Minck” is incorrect. (State’s Brief at 16). The keys were not discovered when the police searched both Minck’s residence and his brother’s residence. (R. 129; p. 133). No testimony was elicited showing that anyone possessed the keys. Minck testified that he did not have the keys.

(R.125; p. 74). To search Minck's brother's residence the police entered through an open window to open the door from the inside. (R. 129; p. 133). Somehow the State conjured up that someone without keys to the residence would have had to pull T.C.'s corpse through the window. (State's Brief at 16). Minck contends that anyone could have gone through the window to open the door and then brought the corpse through the door which also lends credence to someone without keys after placing T.C.'s corpse in the residence would have locked the door from the inside and exited through the window. There simply was not evidence that Minck possessed his brother's keys and had exclusive access.

The State also posited that someone would have had to deposit Minck's DNA on the tarp and plastic. (State's Brief at 16). Minck provided uncontroverted testimony that the tarp was his and he used it for removing leaves, and the plastic was also his and he used it to wrap around the air conditioner. (R. 125; p. 67). The State offered no

evidence to rebut Minck's testimony. The State's DNA expert testified that DNA does not determine when the DNA was placed on these items and that the DNA could have been on these items for a long time. (R. 128; p. 62). The State's argument that Minck was the major contributor of DNA on the tarp and plastic ignores the circumstances that whoever moved T.C.'s corpse into the residence did it in the winter time and most likely was wearing gloves and would not have left any DNA. The State's contention that the DNA evidence showed that Minck used the tarp and plastic to hide T.C.'s corpse has no support from evidence produced at trial.

The State also made up a scenario where T.C. arrived at Minck's home after overdosing on heroin/fentanyl and consumed an oxycodone pill from Minck and then died. (State's Brief at 21). Not only is there no reference to the record to support this story, a fentanyl overdose has almost an immediate effect after injection. (*Here's What Happens During a Fentanyl Overdose*, by Sara G. Miller

(livescience.com-health-not-hype) published April 13, 2017). T.C. would not have been able to visit Minck and consume more drugs after overdosing on Fentanyl.

The State also argues that Minck removed the amber light from T.C.'s car and transported the car to Lake Altoona Dam. (State's Brief at 17). The State cites R. 25; pp. 9-11 as factual support for this statement. (State's Brief at 17-18). A review of the transcript shows only that T.C.'s car was located at Lake Altoona Dam and that the amber light was missing. (R. 25; pp. 9-11). There is no testimony that Minck transported the car to Lake Altoona Dam or that Minck removed the amber light.

The State noted that T.C.'s car lacked evidentiary value. (State's Brief at 6). However, the police did collect DNA samples from the car but chose not to test the DNA because Minck had told the police he had been in the car and so finding Minck's DNA in the car would not have been necessary. (R. 129; p. 116). The car may have been of evidentiary value had the DNA been tested and a

third party's DNA found in addition the T.C.'s DNA and Minck's DNA.

T.C. died of a heroin/Fentanyl overdose. (R. 128; pp. 97-98). There is no dispute that the person who delivered the heroin/Fentanyl to T.C. would be guilty of a homicide pursuant to Wis. Stat. § 940.02(2)(a) and would have had a motive to hide T.C.'s corpse. The State conceded that Minck did not sell heroin. (R. 125; p. 90).

T.C. went missing on November 5, 2018 until his corpse was found in Minck's brother's residence on December 6, 2018. Exact time of death was not determined. (R. 128; p. 99). As shown above and in Appellant's Brief, the State did not prove beyond a reasonable doubt that Minck had exclusive access to his brother's residence; the State did not prove beyond a reasonable doubt that Minck used his tarp and plastic to move T.C.'s corpse; the State did not prove beyond a reasonable doubt that Minck was involved in how T.C.'s car got to Altoona Lake Dam; and, did not prove beyond a

reasonable doubt that Minck took T.C.'s amber light. The State simply failed to present sufficient evidence to prove beyond a reasonable doubt that Minck concealed T.C.'s corpse.

CONCLUSION

For all of the reasons stated above and in Appellant's Brief, Roger A. Minck requests this court to vacate his conviction pursuant to Wis. Stats. § 940.11(2) in Count One of the Judgment of Conviction and remand the case back with instructions to adjust his sentencing accordingly.

Dated this 22nd of June 2023.

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