

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

State of Minnesota,  
  
Plaintiff,  
  
vs.  
  
Beverly Nicole Burrell,  
  
Defendant.

MNCIS No.: **27-CR-16-18602**

**COURT TRIAL VERDICT AND  
SUPPORTING MEMORANDUM**

TO: THAD N. TUDOR, ASSISTANT HENNEPIN COUNTY ATTORNEY; MICHAEL J. RADMER, ASSISTANT HENNEPIN COUNTY ATTORNEY; CRAIG E. CASCARANO, ATTORNEY FOR DEFENDANT; AND BEVERLY N. BURRELL, DEFENDANT.

This matter came before this Court for a bench trial on May 17, and 18, 2017.

Assistant Hennepin County Attorneys Thad Tudor and Michael Radmer represented the State. The Defendant, represented by Attorney Craig Cascarano, waived a jury trial. The Court received numerous exhibits and took the testimony of several witnesses:

1. Samuel Doud;
2. Holly Schultz;
3. Officer Cory Sinon;
4. Assistant Chief Hennepin County Medical Examiner, Dr. Owen Middleton; and
5. Detective Travis Sarafin.

Defendant is charged with Murder in the Third Degree —Controlled Substances. The elements of Murder in the Third Degree —Controlled Substances are:

1. First the death of Max Tillitt must be proven.
2. Second, the Defendant was the proximate cause of Max Tillitt's death by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering heroin.

3. Third, the Defendant's act took place on, or about, September 25, 2015 in Hennepin County, Minnesota.

### **CONCLUSIONS OF LAW**

1. The Court finds each element of the offense is proven beyond a reasonable doubt. As such, the court enters a verdict of GUILTY and will set this matter for a future hearing to order a pre-sentence investigation and set a sentencing hearing date.

### **MEMORANDUM OF LAW**

#### **FINDINGS OF FACT**

The Defendant, Beverly Burrell, sold heroin directly to Max Tillitt and/or Samuel Doud on September 25, 2015. Doud testified that he and/or Tillitt bought heroin from the Defendant on a daily basis, hundreds of times prior to that date. Further, that the Defendant was a dependable supplier of heroin and that consequently he and Tillitt had no need for another heroin dealer. Doud testified that on September 25, 2015 in a Minneapolis Perkins Restaurant parking lot, Tillitt purchased four \$40 bags of heroin, which was enough for several uses. Present with Tillit and Doud during the sale was Holly Schultz, Tillitt's fiancée at the time. Tillitt then drove Doud and Schultz to a motel in Eden Prairie where the group planned to use the heroin; they checked in at 6:16 p.m.

Doud testified he and Tillit each took three "hits" of what was supposed to be LSD, which Tillit had also purchased that day. Doud believes that it was probably "fake" based on the strange chemical taste, and the fact that "real" LSD is "pretty rare." While Doud was unsure of whether they used the alleged LSD prior to using any of the heroin they purchased from the Defendant, he testified to Tillitt permitted him to borrow, and leave with, the van Tillitt used to drive the group around that day. It is clear from the testimony of Holly Schultz

that Doud's departure, and inferentially the fake LSD use, was prior to Tillitt's final and fatal heroin dose.

While the Court found some portions of Schultz's testimony questionable, the following recitation includes only that which was credible. Schultz testified that she flew to Minnesota to visit Tillitt on September 25, 2015. Tillit and Doud picked her up from the airport around 4:15 p.m. Schultz recalled Tillit mentioning a plan to meet up with a heroin dealer named "Ice" —Defendant's street name— and that Tillitt was excited to show his newborn son to the Defendant. Schultz further testified that she witnessed Tillitt give the Defendant money in exchange for heroin, and that she was not aware of any other stops where Tillit could have purchased heroin. At 6:16 p.m., Tillit, his infant son, Schultz, and Doud checked into the Eden Prairie motel. Schultz did not recall either Doud or Tillit appearing to be under the influence of drugs when they arrived at the motel.

Sometime after Doud left the motel with Tillitt's van, Schultz witnessed Tillitt prepare a quantity heroin for intravenous ingestion. Tillit sat on the floor near the bed, cooked a dose of heroin on a spoon, and loaded it into a needle. Schultz could not recall the exact amount of heroin used, but she didn't see any other drugs. Schultz states that almost immediately after seeing Tillitt inject the heroin, he started "acting crazy." Tillitt threw furniture around the room for a short period before collapsing. Schultz called 911 at 11:24 p.m., approximately 10 to 15 minutes after witnessing Tillitt ingest the heroin she saw him purchase from the Defendant earlier that day. Officer Cory Sinon arrived at the Eden Prairie motel seconds after Schultz's 911-call, and found Tillit not breathing, and without a pulse. The officer attempted life-saving measures, but was unsuccessful. Officer Sinon also noted that furniture in the motel room was knocked around.

Dr. Owen Middleton, of the Hennepin County Medical Examiner's Office, conducted Tillitt's autopsy on September 26, and 27, 2015. Dr. Middleton observed two recent needle puncture marks on the inside of Tillitt's left elbow as well as many scrapes and bruises on the rest of Tillitt's body, but none were significant enough to have contributed to death. There were also wounds typical of those left by EMS life-saving measures, including one of the fresh needle punctures on the inside of Tillitt's left arm. Tillit was wearing a band indicating that he was on the medication Vivitrol. Vivitrol is an opiate receptor blocker which diminishes the effects or high brought on by ingesting opiates, however, excessive opiate use can overcome the medication.

The internal autopsy revealed that Tillitt's lungs were slightly heavy and showed signs of mild edema —fluid in the lungs. In addition, Tillitt's left anterior descending coronary artery —which supplies blood to the heart— was about 60% blocked, however, Dr. Middleton added that this was below the 75% threshold that is usually reached before causing a heart attack. The Medical Examiner also screened Tillitt's blood, urine, and vitreous ocular fluid confirming that Tillit had recently ingested both methamphetamine and heroin (based on the presence of heroin metabolites). Dr. Middleton found Tillitt's total methamphetamine to blood quantitation to be 0.65 mg/L, which the medical examiner found to be about average when compared to 100 other deaths caused by methamphetamine toxicity. In addition Tillitt's heroin to blood quantitation was 1.35 mg/L, which Dr. Middleton testified is on the high end compared to other deaths cause by heroin toxicity. Based on these finding, Dr. Middleton ultimately concluded that Tillit died of mixed heroin and methamphetamine toxicity; he testified that the methamphetamine, which is a stimulant, caused Tillitt's heart to work harder, and require more oxygen; while simultaneously, the

heroin depressed Tillitt's respiration limiting his lung's ability supply the increased need for oxygen. In Dr. Middleton's opinion, Tillitt's death on 9/26/2015 is the result of the combination of both of these factors.

#### ANALYSIS

Defendant cites *Burrage v. United States*, in claiming that the State must prove Maxwell Tillitt would not have died "but for" ingesting heroin supplied by the Defendant. 134 S.Ct. 881 (2014). However, that case dealt with determining the level of causation applicable to proving a federal sentencing enhancement where the statute imposes an enhanced liability "when 'death ... results from'" taking a controlled substance. *Id.* at 885 (*emphasis added*) (citing 21 U.S.C.A. § 841(b)[(1)(A)](C) (2012 ed.)). Defendant correctly states that under such circumstances, "but-for" causation must be proven; that is, the Defendant suggests that the State must show that *but-for* Tillitt's ingestion of heroin — supplied by Defendant— Tillitt would not have died. However, Minnesota's third degree murder statute does not contain the same "but-for" language, and expressly imposes proximate causation.

Under Minnesota law, "[w]hoever, ... *proximately* causes the death of a human being by ... unlawfully selling ... a controlled substance ... is guilty of murder in the third degree." Minn. Stat. § 609.195(b) (*emphasis added*). Minnesota courts most commonly apply proximate causation in criminal prosecutions in the context of criminal vehicular operation cases. In such cases, "Minnesota law requires the state to prove that [a motorist]'s act of operating a motor vehicle was the proximate cause of [a decedent]'s death. *State v. Nelson*, 806 N.W.2d 558, 562 (Minn. App. 2011) (citing *State v. Jaworsky*, 505 N.W.2d 638, 643 (Minn. App. 1993), *review denied* (Minn. Sept. 30, 1993)). The *Nelson* court further

explained that “*Jaworsky* was the first Minnesota case to use the civil definition of proximate cause in a criminal vehicular operation case, defining proximate cause as ‘*something that played a substantial part in bringing about the death or injury.*’” 505 N.W.2d at 643. This civil substantial factor definition of causation is now commonly used in criminal vehicular homicide and operation cases. *See, e.g., State v. Dunagan*, 521 N.W.2d 355, 356 (Minn.1994); *State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000); *In re Welfare of C.P.W.*, 601 N.W.2d 204, 208 (Minn. App. 1999).

Even without proximate causation literally expressed by the statute here, the criminal law in Minnesota has long applied a similar test in defining causation. *See State v. Gatson*, 801 N.W.2d 134, 146 (Minn. 2011) (stating that “[t]o prove that a defendant is guilty of causing the death of another, the State must prove the defendant’s acts were a substantial causal factor leading to the death”). The Minnesota Supreme Court further clarified that “it must be shown that the defendant’s acts injured the victim which then led to the victim’s death.” *Id.* In order for a defendant to refute an initial showing of substantial factor causation, they must show that some alternate conduct was the “sole cause” of death. *Id.* (stating that “[i]f the defendant seeks to establish a superseding cause, the intervening conduct must be the sole cause of the end result”). Thus, whether as ‘proximate cause’ or traditional state definition of criminal causation, the State need only show that everything else was not the sole reason Tillitt died, and that Defendant’s act substantially contributed to his death. *See State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000) (stating that “[f]or an intervening cause to be considered ... superseding ... it must have actively worked to bring about *a result which would not otherwise have followed* from the [defendant’s conduct]”) (*emphasis added*); *Walker v. State*,

394 N.W.2d 192, 196 (Minn. App. 1986) (“The fact that a victim was suffering from a condition that might itself have caused death in time does not relieve a defendant of responsibility for an injury that causes death even though he could not reasonably anticipate death would result”), *review denied* (Minn. Nov. 26, 1986); *State v. Schaub*, 520-21, 44 N.W.2d 61, 65 (Minn. 1950) (“one whose wrongful act hastens or accelerates the death of another, or contributes to its cause, is guilty of homicide, though other causes co-operate.”); *State v. King*, 367 N.W.2d 599, 602 (Minn. App. 1985) (“The fact that other causes contribute to the death does not relieve the actor of responsibility”) (quotation omitted).

Here, two witnesses testified to the exchange of heroin from the Defendant to Tillitt just hours prior to Tillitt’s death. There was little opportunity or reason —considering Tillitt received \$160 worth of heroin from the Defendant— for Tillitt to purchase heroin from another dealer the same day as the exchange with Defendant on September 25, 2015. Further, Schultz witnessed the ingestion of Defendant’s heroin in Tillitt’s last minutes of consciousness. In that medical examiners opinion, the concentration of heroin in Tillitt’s blood was high compared to that of other heroin caused deaths, and contributed Tillitt’s death. Defendant argues that she cannot be convicted of causing Tillitt’s death because it was not *solely* attributable to heroin, but a “reasonable degree of medical certainty” is not required for a criminal conviction. *State v. Rhodes*, 657 N.W.2d 823, 831 n. 1 (Minn. 2003). The state does not need to prove the actual mechanism of death, only that the Defendant’s conduct contributed to Tillitt’s death. *State v. Torkelson*, 404 N.W.2d 352, 357 (Minn. App. 1987), *review denied* (Minn. Jun. 25, 1987).

Because the State proved the heroin ingested by Tillitt came from the Defendant, and because the State proved that heroin was a substantial cause of Tillitt’s death, and because

the sale and ingestion occurred in Hennepin County, Minnesota, the Defendant is guilty of murder in the third degree.

As an aside, substantial circumstantial evidence suggests the circumstances of Tillitt's death meets the 'but for' test as well. The evidence strongly suggests the use of methamphetamine was earlier than the use of heroin. Tillit did not appear to be in medical distress after the use of methamphetamine. To the contrary, the use of heroin, appears to have acted as the last straw or as a catalyst putting the mechanism of death in motion. Tillitt's vulnerability because of his underlying health and drug use simply make him an eggshell victim. He may have been more likely to succumb to the use of heroin as a result of his earlier methamphetamine use, but the circumstances strongly suggest he would not have died 'but for' his ingestion of the Defendant's heroin. Tillit did not go into a rampage, and then slip into a fatal unconsciousness until shortly after the last, fatal dose of Defendant's heroin. As such, even if *Burrage* controlled here, the Defendant would be liable for Tillitt's death.

BY THE COURT:

DATE: 7/7/17

Paul R. Scoggin

Paul R. Scoggin,  
Judge of District Court