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**DISTRICT II**

February 18, 2026

*To:*

Hon. Daniel S. Johnson  
Circuit Court Judge  
Electronic Notice

Michele Jacobs  
Clerk of Circuit Court  
Walworth County Courthouse  
Electronic Notice

Leonard D. Kachinsky  
Electronic Notice

John W. Kellis  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2024AP2448-CR

State of Wisconsin v. Adam P. Rogers (L.C. #2021CF33)

Before Neubauer, P.J., Grogan, and Lazar, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Adam P. Rogers appeals from a judgment entered on a jury verdict and an order denying his postconviction motion. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>1</sup> For the following reasons, we affirm.

At Rogers's trial, a hotel manager testified that on January 4, 2021, he saw water leaking directly under one of the hotel rooms, which he then entered and saw that the room was flooded.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

He saw two people, Gary and Mary,<sup>2</sup> unconscious in the overflowing bathtub; Gary's face was submerged in the water. He dialed 911. After their arrival, law enforcement and then Emergency Management Services tried to revive Gary, who had no pulse. While Mary survived, Gary died. Law enforcement found a little plastic baggie and a "rock substance" resembling illegal drugs in the room.

Mary testified that on January 4, 2021, she or Gary called Rogers to obtain drugs. Rogers delivered what Gary and Mary believed was heroin, but lab results determined was fentanyl. Mary testified that she and Gary used the drug in the hotel room where they were later found unconscious.

The forensic pathologist who performed Gary's autopsy testified that it revealed that Gary died of acute fentanyl toxicity. While drowning was the cause of death, fentanyl led to the drowning and was a substantial factor in Gary's death.

Law enforcement testified that on January 8, 2021, they conducted a controlled buy where they had Mary call Rogers to obtain drugs. Mary and Rogers met at a convenience store where Mary bought heroin from Rogers. Law enforcement arrested Rogers.

Law enforcement charged Rogers with one count of first-degree reckless homicide (Count One, allegedly occurring on January 4, 2020), contrary to WIS. STAT. § 940.02(2)(a); and two counts of delivery of heroin (Count Two, allegedly occurring on January 4; and Count Three, allegedly occurring on January 8), contrary to WIS. STAT. § 961.41(1)(d)1.

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<sup>2</sup> Consistent with the policy in WIS. STAT. RULE 809.19(1)(g), the victims are identified by pseudonyms.

Rogers pleaded not guilty to all counts. The jury returned a verdict of guilty on all counts. The trial court sentenced Rogers on Count One to twelve years' initial confinement and ten years' extended supervision consecutive to any other sentence, on Count Two to costs only, and on Count Three to four years' initial confinement and four years' extended supervision concurrent to any other sentence.

In August 2024, Rogers filed a postconviction motion, asking the circuit court to vacate his conviction on Count Two on the ground that it was multiplicitous with Count One. Rogers had not brought up this issue at trial. The court denied Rogers's motion. The court held that while Counts One and Two were identical in law, the two charges differed in fact as they involved drug deliveries to two separate people. Rogers timely appealed.

Rogers claims that his constitutional rights protecting him from double jeopardy have been violated by what he alleges are the State's multiplicitous charges against him. *See* U.S. CONST. amend. V; WIS. CONST. art. I, § 8. “[A] constitutional right may be forfeited in criminal ... cases by the failure to make timely assertion of the right ....[’]” *State v. Koller*, 2001 WI App 253, ¶41, 248 Wis. 2d 259, 635 N.W.2d 838 (quoting *Michel v. Louisiana*, 350 U.S. 91, 99 (1955), *reh’g denied*, 350 U.S. 955 (1956) (citation omitted). “[A] multiplicity objection is waived if not raised *prior to the time the case is submitted to the jury.*” *Koller*, 248 Wis. 2d 259, ¶44 (emphasis added). A defendant who waives this objection “may not obtain relief unless he shows that an omitted multiplicity objection constituted ineffective assistance of counsel.” *Id.*; *see State v. Erickson*, 227 Wis. 2d 758, 766, 596 N.W.2d 749 (1999) (“[T]he normal procedure in criminal cases is to address waiver within the rubric of the ineffective assistance of counsel.”). Whether a defendant has “adequately preserved [a claim] for appeal is a question of law this court reviews de novo.” *State v. Coffee*, 2020 WI 1, ¶17, 389 Wis. 2d 627, 937 N.W.2d 579.

Here, Rogers failed to make his multiplicity objection at trial, prior to the time the case was submitted to the jury. In his postconviction motion, he fails to allege ineffective assistance of counsel, which is the proper recourse for pursuing his forfeited claim. Thus, we affirm on the basis that Rogers forfeited his claim.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

*See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen  
Clerk of Court of Appeals*