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SUPREME COURT NO. _____

Case #: 1029748

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

STACY SMITH,
Petitioner.

ON DISCRETIONARY REVIEW
FROM THE COURT OF APPEALS, DIVISION TWO

Court of Appeals No. 57435-7-II
Grays Harbor County No. 21-1-00285-14

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, STACY SMITH, by and through her attorney, CATHERINE E. GLINSKI, requests the relief designated in part

B.

B. COURT OF APPEALS DECISION

Smith seeks review of the March 19, 2024, unpublished decision of Division Two of the Court of Appeals affirming her conviction of controlled substances homicide.

C. ISSUE PRESENTED FOR REVIEW

Stacy Smith was charged with controlled substances homicide after telling police she gave decedent a counterfeit pill which resulted in his death. Where the State produced no evidence other than Smith's statements which gave rise to a reasonable inference that the crime was committed, should the court have granted the corpus delicti motion to dismiss?

D. STATEMENT OF THE CASE

On March 28, 2021, Don Casey, a 71-year-old man with severe health problems, died from an overdose of a combination

of drugs, including Fentanyl. 3RP¹ 178; 4RP 254, 267, 270-71. While Casey's pre-existing heart, lung, and kidney diseases would have been enough to kill him even without the drugs in his system, the medical examiner formed the opinion that the drugs contributed to his death. 4RP 267, 285-90.

Casey had recently injured his back and was scheduled to have surgery. He avoided narcotic pain medications, however, because he had addiction issues in the past. 3RP 179. Although he was in pain, he was still able to get around. 3RP 179. He would go to the VA clinic for healthcare by himself, and he liked to go around town on his own to get out of the house. 3RP 180, 208-09.

Petitioner Stacy Brook Smith was a close friend of Casey and his partner, Sarah Hemminger. 3RP 181-82. She spent a lot

¹ The Verbatim Report of Proceedings is contained in four volumes, designated as follows: 1RP—11/1/21, 11/15/21, 4/18/22, and 7/11/22; 2RP—5/3/22, 5/9/22 and 8/8/22; 3RP—8/16/23; and 4RP—8/17/22 and 9/12/22.

of time with the couple, drinking and socializing, and also did some cleaning and gardening for them. 3RP 182, 185, 207-08.

On the evening before Casey died, Smith asked Casey's landlord Jeff Ragan, who lived on the same property, for help getting Casey to bed. Casey was extremely intoxicated, and Smith and Hemminger were not able to move him. 3RP 83-85. Casey was a heavy drinker, and Ragan saw him intoxicated frequently, but he had never seen Casey this drunk. 3RP 95-96.

A couple of hours later, Ragan heard frantic shouting outside Casey's trailer. He went inside and saw that Casey was not breathing. A friend started CPR while Ragan called 911. 3RP 87-88. Ragan noticed a Narcan container on the floor, and Hemminger was crying. 3RP 89. Smith waited outside for the paramedics. 3RP 113. By the time paramedics arrived, Casey was not responsive to life-saving procedures. 3RP 59.

Police officers who responded to the 911 call collected the medications they saw at the scene but did not search the home for others. 3RP 73. None of the medications they collected

contained Fentanyl, and nothing about the scene made responding officers suspect criminal activity. 3RP 74, 76.

Some months later, after the autopsy report was completed, police began to suspect Casey died as a result of a controlled substance he had been given. 3RP 236. They interviewed Smith, who admitted that a couple of days before Casey died, he had asked her for pain medication, and she gave him a “Dirty 30”² which she broke into pieces. Exhibit 22, at 10-11. He took the last of it around noon on the day he died. *Id.* at 15.

Smith was arrested based on her statement to law enforcement, and she was charged with controlled substances homicide. 3RP 239; CP 1. Smith moved to dismiss the charge for failure to establish corpus delicti, arguing that there was no evidence independent of her statement to establish the unlawful delivery element of the offense. CP 3-10.

² “Dirty 30” is a term for counterfeit pills containing fentanyl, which are made to look like Percocet. 3RP 232.

In his supporting declaration, defense counsel stated that certain facts would likely be elicited at an evidentiary hearing, including that months after Casey's death people told police they were suspicious of the circumstances; the coroner's report indicated the presence of Fentanyl in Casey's system; investigators who checked Casey's medications at the time of his death did not observe any medication with Fentanyl; witnesses believed Smith had given Casey a counterfeit pill and that Christa Anderson had knowledge of the delivery; Anderson told police that Smith gave Casey a "Dirty 30" and that Smith felt she had contributed to Casey's death; and when police asked Smith about the counterfeit pill, she admitted giving it to Casey. CP 4-5.

In arguing the motion, counsel pointed out that there was no evidence that Anderson actually witnessed Smith giving Casey the pill containing Fentanyl. Rather, it appeared Smith had told her about it. CP 8; 2RP 3. Since the police did not follow up investigation as to how Casey obtained the pill, there was no evidence independent of Smith's statements to establish the

unlawful delivery element of controlled substances homicide.
2RP 3-5.

The State argued that there was sufficient circumstantial evidence to support Smith's statement because police were investigating this as a delivery before the statement, and since Casey had Fentanyl in his system and had no prescription for the drug, there must have been an unlawful delivery. 2RP 9.

The court asked about the effect of RCW 10.58.035, which states that where independent proof of corpus delicti is absent and the alleged victim is dead, a lawfully obtained statement by the defendant is admissible if there is substantial independent evidence to establish the trustworthiness of the statement. 2RP 4, 6-7. Defense counsel noted that Smith was not claiming her statements were unlawfully obtained, but he argued that there still needs to be evidence of delivery independent of Smith's statements. 2RP 4, 7.

The court denied the motion to dismiss. It found that Smith's statement to police was admissible under the statute,

there was a relationship between Smith and Casey, and Smith made statements not just to law enforcement but to another witness. 2RP 12.

Following a bench trial the court found Smith guilty of controlled substances homicide. Smith appealed, arguing that the State failed to produce sufficient evidence, independent of Smith's statements, to establish the corpus delicti of the offense. The Court of Appeals affirmed the conviction.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

The Court of Appeals' ruling that the evidence was sufficient to satisfy the corpus delicti rule conflicts with decisions of this Court and the Court of Appeals.

In Washington, a defendant's incriminating statements are not sufficient, standing alone, to establish that a crime took place. *State v. Dow*, 168 Wn.2d 243, 252-53, 227 P.3d 1278 (2010). Under the corpus delicti doctrine, the State must produce evidence, independent of the accused's statements, sufficient to support a finding that the charged crime was committed. *State v.*

Brockob, 159 Wn.2d 311, 327-28, 150 P.3d 59 (2006); *State v. Bernal*, 109 Wn. App. 150, 152, 33 P.3d 1106 (2001), *review denied*, 146 Wn.2d 1010 (2002). In considering whether the State has met its burden, the court views the evidence in the light most favorable to the State. *State v. Aten*, 130 Wn.2d 640, 658, 927 P.2d 210 (1996). Where the State fails to produce prima facie evidence of the crime independent of the defendant's statements, the charge must be dismissed. *Dow*, 168 Wn.2d at 254-55.

Even when the defendant's statements are lawfully obtained and properly admitted at trial, there must still be independent evidence to support the State's case. *Dow*, 168 Wn.2d at 253. In *Dow*, this Court affirmed the trial court's dismissal of the charge where there was no evidence independent of the defendant's statements that the crime occurred. Even though the statements were trustworthy and admissible under RCW 10.58.035³, the charge was properly dismissed, because

³ The statute provides as follows:

1) In criminal and juvenile offense proceedings where independent proof of the corpus delicti is absent, and the alleged victim of the crime is dead or incompetent to testify, a lawfully obtained and otherwise admissible confession, admission, or other statement of the defendant shall be admissible into evidence if there is substantial independent evidence that would tend to establish the trustworthiness of the confession, admission, or other statement of the defendant.

(2) In determining whether there is substantial independent evidence that the confession, admission, or other statement of the defendant is trustworthy, the court shall consider, but is not limited to:

(a) Whether there is any evidence corroborating or contradicting the facts set out in the statement, including the elements of the offense;

(b) The character of the witness reporting the statement and the number of witnesses to the statement;

(c) Whether a record of the statement was made and the timing of the making of the record in relation to the making of the statement; and/or

(d) The relationship between the witness and the defendant.

(3) Where the court finds that the confession, admission, or other statement of the defendant is sufficiently trustworthy to be admitted, the court shall issue a written order setting forth the rationale for admission.

(4) Nothing in this section may be construed to prevent the defendant from arguing to the jury or judge in a bench trial that the statement is not trustworthy or that the evidence is otherwise insufficient to convict.

that statute pertains only to admissibility. It did not relieve the State of its burden to produce sufficient independent evidence to support the conviction. *Dow*, 168 Wn.2d at 253-54.

In this case, Smith did not challenge the admissibility of her statement, and there is no question it was admissible under RCW 10.58.035. CP 2. But contrary to the Court of Appeals conclusion, the State produced no evidence independent of Smith's statements to establish the crime.

The State charged Smith with controlled substances homicide. Under RCW 69.50.415(1), "A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(2) (a), (b), or (c) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide." Even drawing all reasonable inferences from the evidence in favor of the State, there was no evidence to establish unlawful delivery other than Smith's statements.

The Court of Appeals found that statements attributed to Christa Anderson in defense counsel's list of expected evidence provided the necessary corroboration. Opinion, at 7. The State produced no evidence regarding Anderson, however. While all inferences from the evidence must be drawn in the light most favorable to the State in applying the corpus delicti rule, the State has the burden of producing evidence which supports an inference that the crime was committed. *Brockob*, 159 Wn.2d at 328; *Aten*, 130 Wn.2d at 658. Contrary to the Court of Appeals decision, the State did not meet that burden.

Defense counsel argued that it appeared Anderson gained whatever knowledge she had about the delivery from Smith's statements to her. CP 8; 2RP 3. The State offered no evidence which would support a contrary inference. The corpus delicti rule applies to all incriminating statements made by the defendant, however, not just those made to law enforcement. *Aten*, 130 Wn.2d at 657-58. The purpose of the corpus delicti rule is to prevent defendants from being unjustly convicted based on

confessions alone. *City of Bremerton v. Corbett*, 106 Wn.2d 569, 576, 723 P.2d 1135 (1986). Incriminating statements by the defendant, whether made to law enforcement or not, require corroboration under the corpus delicti rule. *Id.* at 577. Thus, Smith's statements to Anderson cannot be considered independent proof of the corpus delicti of controlled substances homicide. *See Aten*, 130 Wn.2d at 658.

Nor did any other evidence corroborate Smith's statements. Although there was evidence of a relationship between Smith and Casey, that evidence did not support an inference that she provided him with controlled substances. There was no evidence that Smith and Casey ever used narcotics together or that Smith ever had narcotics in her possession. Nothing at the scene suggested that there had been an unlawful delivery. 3RP 76. Hemminger testified that Casey was often out on his own during the day. 3RP 170-80, 208-09. There could have been an unlawful delivery, but it is also possible Casey found or stole the drugs he later ingested. Speculation as to the

source of the drugs is not sufficient to establish corpus delicti. *See Bernal*, 109 Wn. App. at 154.

The Court of Appeals' decision affirming Smith's conviction conflicts with prior decisions of this Court and the Court of Appeals holding that the State must produce prima facie evidence of the charged crime independent of the defendant's statements. This Court should grant review and reverse Smith's conviction of controlled substances homicide. RAP 13.4(b)(1), (2).

F. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse Smith's conviction.

I certify that this document contains 2175 words as calculated by Microsoft Word.

DATED this 16th day of April, 2024.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

March 19, 2024

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

STACY BROOKE SMITH,

Appellant.

No. 57435-7-II

UNPUBLISHED OPINION

MAXA, J. – Stacy Brooke Smith appeals her conviction of controlled substance homicide.¹ Smith was a friend of Don Casey. Smith was present when Casey died of a drug overdose in his trailer. Smith admitted that she gave a pill containing fentanyl to Casey, but she claims that no other evidence corroborated her admission. Therefore, she argues that the trial court erred when it denied her motion to dismiss the controlled substance homicide charge based on the lack of corpus delicti and that the evidence at trial did not establish corpus delicti. Smith also challenges the no contact provision in the judgment and sentence that prohibits her from having contact with the victim’s daughter, Danielle Rucker-Vieira, for 10 years.

We hold that (1) the evidence presented in opposition to the motion to dismiss and at trial was sufficient to establish corpus delicti, and (2) the trial court erred in imposing the no contact provision regarding Rucker-Vieira. Accordingly, we affirm Smith’s controlled substance homicide conviction, but we remand for the trial court to strike the no contact provision regarding Rucker-Vieira from Smith’s judgment and sentence.

¹ Smith also was convicted of first degree identity theft. Smith does not challenge that conviction.

FACTS

Background

On March 28, 2021, Don Casey died in the trailer that he shared with his long-term partner Sarah Hemminger. Casey's landlord, Jeff Ragan, heard shouting inside the trailer, went inside, and saw that Casey was not breathing. Smith was present when Casey began having difficulties. A toxicology screen of Casey's blood disclosed that he had taken several drugs, including fentanyl, before his death. The medical examiner attributed Casey's death to "a combination drug overdose," and opined that fentanyl was the major contributor to his death. Rep. of Proc. (RP) (Aug. 17, 2022) at 267.

Smith was a friend of Casey and Hemminger. She was at their trailer frequently. Hemminger paid Smith to perform household tasks. Ragan's partner described Smith as Casey and Hemminger's caregiver. Smith and Ragan had helped get Casey into bed earlier on the night of his death because Casey was intoxicated.

Law enforcement interviewed Smith about the circumstances of Casey's death. During this interview, Smith stated that she had given Casey a "dirty 30" pill, a type of counterfeit pill that contains fentanyl, and that he had taken a portion of it shortly before his death. RP (Aug. 17, 202) at 232. Law enforcement also interviewed Smith's friend Christine Anderson, who stated that "Smith gave Casey the dirty 30 four days before in pieces." Clerk's Papers (CP) at 5.

The State charged Smith with controlled substances homicide and identity theft.

Motion to Dismiss

Smith moved to dismiss the controlled substance homicide charge based on lack of corpus delicti. She did not argue that her statements to law enforcement were inadmissible.

Instead, she argued that there was no evidence independent of her statements that she delivered a controlled substance to Casey.

In support of this motion, Smith presented a statement of facts that likely would be elicited at an evidentiary hearing, including the following:

8. Months after Casey's death, multiple individuals stated there were suspicious circumstances involving Casey's death.
9. On July 14th, 2021[,] Officer Welter reviewed a coroner's report indicating the presence of 2.7ng/ml of fentanyl. The report indicated the presence of 1.9 ng/ml of norfentanyl and presence of naloxone or narcon[.]
10. The cause of death was the acute combination of drug intoxication including fentanyl.
11. Investigators checked the seized medications and did not observe fentanyl among the seized medications.
12. Witnesses believed Casey had been given a counterfeit pill by Smith and Crista Anderson had knowledge about the delivery of the illegal narcotics.
13. Witnesses believed Smith stood to receive financial gain if Casey were gone.
14. Investigators obtained a list of prescribed medications from the list of Schedule II, III, IV, and V drugs. The coroner advised Casey had a 3 day supply of Hydrocodone prescribed on 3/11/21.
15. Based on the autopsy report and interviews with Ragan and [Ragan's partner Debbie] Sannes, investigators believed Stacy Smith and Christa Anderson knowingly delivered a dirty 30 to Donald Casey.
16. On 7-30-2021, Investigators arranged a confrontation call with Christa Anderson.
17. *Anderson stated Smith gave Casey the dirty 30 four days before in pieces.*
18. Anderson stated Smith felt at fault for Casey's death and the pill she had taken to Casey contributed to his death.
19. Investigators contacted Smith for an interview. Smith advised investigators that she knew people were accusing her of killing Casey.

....

21. Smith was asked about the dirty 30. Smith stated she gave Casey the counterfeit pill two or three days prior and had broken it up for him. Smith described it as a blue dirty thirty.
22. Smith stated she gave the pill to Casey two days before he died and that Casey took the pill in pieces.
23. Smith did not know where she got either pill.
24. Smith was informed that Casey died from acute intoxication including fentanyl.
25. Smith stated Casey took the last of the counterfeit pill about 12 hours before he died.

CP at 4-5 (emphasis added).

The State responded that Smith’s factual statement that she gave Casey the “dirty 30” was corroborated by Anderson’s statement to law enforcement that Smith had delivered a “dirty 30” to Casey.

Taking these facts in the light most favorable to the State, the trial court denied Smith’s motion to dismiss. The case proceeded to a bench trial.

Bench Trial and Verdict

The trial testimony largely was consistent with the statement of facts that Smith submitted in support of her motion to dismiss. In addition, there was testimony that when Ragan found Casey unresponsive, there was an empty Narcan (naloxone) container on the floor of the trailer. Casey’s toxicology report showed that he had naloxone in his blood at the time of his death.

The trial testimony also established that although Casey had received a prescription for pain pills, he had not filled this prescription, that none of Casey’s medications contained

fentanyl, that officers did not find any other fentanyl in the trailer, and that Smith was present when Casey became intoxicated and when Casey was unresponsive.

Anderson did not testify about the statement described in the statement of facts. But one of the investigating officers testified that during his interview with Anderson, she stated that Smith had obtained a “dirty 30.”

The trial court found Smith guilty of controlled substances homicide.

No Contact Provision

At the sentencing hearing, Casey’s daughter Rucker-Vieira addressed the court and talked about how her father’s death had impacted her and her concern that Smith had been distributing fentanyl. In Smith’s judgment and sentence, the trial court ordered that Smith have no contact with Rucker-Vieira for 10 years.

Smith appeals her controlled substances homicide conviction and the provision in the judgment and sentence prohibiting contact with Rucker-Vieira.

ANALYSIS

A. CORPUS DELICTI

Smith argues that the trial court erred when it denied her motion to dismiss for lack of corpus delicti and that the evidence at trial did not establish corpus delicti. She contends that the State failed to present corroborating evidence independent of her statements establishing that she unlawfully delivered a controlled substance to Casey. We disagree.

1. Legal Principles

“The corpus delicti principle requires that the State prove that some crime actually occurred, which for a homicide involves establishing (1) the fact of death, and (2) a causal connection between the death and a criminal act.” *State v. Green*, 182 Wn. App. 133, 142-43,

328 P.3d 988 (2014). More specifically, the corpus delicti of controlled substance homicide requires that the controlled substance was delivered to the deceased person and the use of that controlled substance resulted in the death. *State v. Bernal*, 109 Wn. App. 150, 153, 33 P.3d 1106 (2001).

Under the corpus delicti rule, the State is required to prove that a crime actually occurred. *Green*, 182 Wn. App. at 142. However, “[t]he corpus delicti rule prevents the State from establishing that a crime occurred solely based on the defendant’s incriminating statement.” *State v. Hotchkiss*, 1 Wn. App. 2d 275, 278, 404 P.3d 629 (2017). To establish corpus delicti, “[t]he State must present corroborating evidence independent of the incriminating statement that the charged crime occurred.” *Id.* at 278-79. “Without such corroborating evidence, the defendant’s statement alone is insufficient to support a conviction.” *Id.* at 279.

“We review de novo whether sufficient corroborating evidence exists to satisfy the corpus delicti rule.” *Id.* When making this determination, we “consider the totality of the independent evidence” and “view the evidence and all reasonable inferences therefrom in the light most favorable to the State.” *Id.* Significantly, “less evidence is required to corroborate a defendant’s incriminating statement than to support a conviction.” *Id.* at 285. The State need not establish that the independent evidence alone is “sufficient to support a conviction or even show that the offense occurred by a preponderance of the evidence.” *Id.* at 279. The independent evidence “must only support a logical and reasonable inference that the charged crime has occurred.” *Id.*

To establish controlled substances homicide, the State had to prove that Smith unlawfully delivered a controlled substance, that Casey subsequently used the controlled substance, and that the controlled substance caused Casey’s death. RCW 69.50.415(1).

2. Corroborating Evidence Analysis

First, Smith argues that the trial court erred in denying her motion to dismiss based on corpus delicti because the State failed to present corroborating evidence regarding the statement that she gave Casey fentanyl. Smith claims that the State could not rely on Anderson's statements as corroborating evidence because they were based on Smith's statements to Anderson.

Smith's statement of facts likely to be elicited at an evidentiary hearing, submitted in support of her motion to dismiss the controlled substance homicide charge based on lack of corpus delicti, did not state that Anderson's statements were based on Smith's admissions to Anderson. Taken in the light most favorable to the State, the factual statement from Anderson that "Smith gave Casey the dirty 30 four days before in pieces," CP at 5, indicated that Anderson had personal knowledge that Smith had delivered the "dirty 30" to Casey. This statement was corroborating evidence that Smith delivered a controlled substance to Casey. Therefore, we hold that the trial court did not err when it denied the motion to dismiss.

Second, Smith argues that the evidence presented at trial was insufficient to establish that she delivered a controlled substance to Casey because the State did not produce any corroborating evidence regarding her inculpatory statements.

The State did not present any evidence at trial regarding Anderson's statement that Smith gave Casey a "dirty 30." Instead, the investigating officer testified that Anderson had discussed with him where Smith had obtained a "dirty 30."

Viewed in the light most favorable to the State, the officer's testimony indicated that Smith had obtained possession of a "dirty 30." And the evidence showed that a "dirty 30" contained fentanyl. The evidence at trial also established that (1) Smith was a friend and

caregiver to Casey, (2) Casey had not filled any of his prescriptions for narcotics, (3) none of Casey's medications contained fentanyl, (4) officers did not find any other fentanyl in the trailer, and that someone present when Casey was unresponsive had administered Narcan, suggesting that they knew he had ingested narcotics.

This evidence was not sufficient to prove beyond a reasonable doubt that Smith delivered a controlled substance to Casey. But as noted above, "less evidence is required to corroborate a defendant's incriminating statement than to support a conviction." *Hotchkiss*, 1 Wn. App. at 285. Taking all of these facts in the light most favorable to the State, they are sufficient to corroborate that Smith delivered a controlled substance to Casey. Therefore, we hold that the evidence presented at trial was sufficient to satisfy the corpus delicti rule.

B. NO CONTACT PROVISION

Smith argues that the trial court erred when it included a no contact provision in the judgment and sentence that prohibited contact with Rucker-Vieira. She asserts that the no contact provision was improper because Rucker-Vieira was not the victim and the no contact order was not crime related. We agree.

RCW 9.94A.505(9)² provides, in part, "As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter."³

A crime-related prohibition is a court order "prohibiting conduct that directly relates to the

² Although the legislature amended this statute in 2022, we cite to the current version of the statute because the 2022 amendments did not alter the relevant subsection.

³ In addition, RCW 9.94A.703(3)(b) states that a trial court has discretion to order as a community custody condition that the defendant "[r]efrain from direct or indirect contact with the victim of the crime or a specified class of individuals." However, the provision at issue here is not a community custody condition. (Although the legislature amended this statute in 2021 and 2022, we cite to the current version of the statute because these amendments did not alter the relevant subsection.)

circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10).⁴ Crime-related prohibitions can include a no-contact order regarding the victim of a crime. *In re Pers. Restraint of Rainey*, 168 Wn.2d 367, 376, 229 P.3d 686 (2010).

However, no contact provisions are not necessarily limited to the direct victims of the crime. *State v. Warren*, 165 Wn.2d 17, 32-34, 195 P.3d 940 (2008). A trial court can impose a no contact provision prohibiting contact between the defendant and a victim’s family member if the order directly relates to the circumstances of the crime. *Id.* at 33-34. We review such conditions for abuse of discretion and “[s]uch conditions are usually upheld if reasonably crime related.” *Id.* at 32.

In *Warren*, the Supreme Court held that an order prohibiting contact between the defendant and his wife, the mother of the victims, was not an abuse of discretion because the no-contact order was reasonably related to the crime. 165 Wn.2d at 33-34. The court concluded that it was not an abuse of discretion to impose the no-contact order because Warren’s wife also was the victims’ mother and a witness, Warren had attempted to induce her not to cooperate with the prosecution, and Warren had a prior criminal history for beating her. *Id.* at 33-34.

However, no similar facts are present here. Rucker-Vieira was not a witness, she had no ongoing relationship with the victim because he was deceased, and there was no evidence that she had had any prior contact with Smith. The State cites no authority for the proposition that a trial court can impose a no contact provision in the judgment and sentence under these facts.⁵

⁴ Although the legislature amended this statute in 2021 and 2022, we cite to the current version of the statute because these amendments did not alter the relevant subsection.

⁵ The State cites only to an unpublished opinion, *State v. Lee*, No. 51633-1-II, slip op. at 7 (Wash. Ct. App. Jan. 28, 2020 (unpublished)), <http://www.courts.wa.gov/opinions/pdf/D2%2051633-1-II%20Unpublished%20Opinion.pdf>, and relies on RCW 9.94A.703(3)(b). But *Lee* involved a community custody condition imposed pursuant to RCW 9.94A.703(3)(b), not a no contact provision in the judgment and sentence. *Id.*

Therefore, we conclude that the trial court erred in imposing the no contact provision regarding Rucker-Viera.

CONCLUSION

We affirm Smith's controlled substance homicide conviction, but we remand for the trial court to strike the no contact provision regarding Rucker-Vieira from Smith's judgment and sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.




MAXA, J.

We concur:



I. J.



GLASGOW, C.J.

at 7. And RCW 9.94A.703(3)(b) addresses only community custody conditions, and the no contact provision here was not imposed as a community custody condition.

GLINSKI LAW FIRM PLLC

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