

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Curtis Atkinson,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 23, 2024

Court of Appeals Case No.  
23A-CR-587

Appeal from the Delaware Circuit  
Court

The Honorable Thomas A.  
Cannon, Jr., Judge

Trial Court Cause No.  
18C05-2102-F1-3

**Memorandum Decision by Judge Kenworthy**  
Chief Judge Altice and Judge Weissmann concur.

**Kenworthy, Judge.**

## Case Summary

- [1] Following a jury trial, Curtis Atkinson was convicted of Level 1 felony aiding, inducing, or causing dealing in a controlled substance resulting in death<sup>1</sup> (“Count 1”); Level 5 felony conspiracy to commit dealing in a narcotic drug<sup>2</sup> (“Count 2”); and Level 5 felony conspiracy to commit dealing in methamphetamine<sup>3</sup> (“Count 3”). Atkinson now appeals, claiming the evidence was insufficient to prove Counts 1 and 2.<sup>4</sup> Determining sufficient evidence supports both convictions, we affirm.

## Facts and Procedural History

- [2] Jennifer Thomas lived with her parents and her young daughter in Eaton, Indiana. Following a car accident, Thomas was prescribed pain medication and developed substance abuse issues. Despite attending rehabilitation clinics, Thomas kept struggling with substance abuse. Thomas did not have a car. Her friend Brian Caylor would drive her around in exchange for drugs.
- [3] Around the week of November 23, 2020, Atkinson and his girlfriend, Cynthia Crane, were staying in a motel in Muncie, Indiana. A few days before

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<sup>1</sup> Ind. Code §§ 35-42-1-1.5(a) (2019) & 35-41-2-4 (1977).

<sup>2</sup> I.C. §§ 35-48-4-1(a)(1) (2017) & 35-41-5-2 (2014).

<sup>3</sup> I.C. §§ 35-48-4-1.1(a) (2017) & 35-41-5-2.

<sup>4</sup> Atkinson does not challenge his conviction for Count 3. Atkinson concedes there was evidence he sold methamphetamine to Thomas. *Appellant’s Br.* at 8. To the extent Atkinson’s statements that he “*allegedly*” sold methamphetamine to Thomas, *see id.*, is a challenge to that finding and his conviction, such challenge is waived because Atkinson did not develop that argument, *see* Indiana Appellate Rule 46(A)(8)(a).

November 23, Thomas visited Atkinson and Crane's motel room, where she used drugs and overdosed. Atkinson performed CPR and used Narcan to revive Thomas.

[4] On November 23, Thomas messaged Atkinson, thanking him for saving her because "most [people] would['ve] left [her] for dead[.]" *Ex. Vol. 4* at 32. Thomas asked Atkinson if she could "get a [little] more" because Thomas was "gonna need it come tomorrow." *Id.* at 33.

[5] On November 24, Atkinson messaged Thomas asking how much she wanted because he and Crane were "almost out[.]" *Id.* Atkinson told Thomas he planned to get a "quad" (quarter of an ounce), but he currently had "a half g" (half of a gram) that would cost seventy dollars. *Id.* at 36. He apologized to Thomas because his normal price was sixty dollars, but he assured Thomas "it's worth it . . . [because] it's fire and hard to find good like that around[.]"<sup>5</sup> *Id.* Thomas told Atkinson she wanted "all of it[.]" *Id.* at 38. Thomas messaged Atkinson not to tell Caylor because Thomas would tell Caylor she was "getting a 20" (buying a twentieth of a gram or twenty dollars' worth of the drug). *Id.* at 37. Thomas had forty dollars and pawned a ring to make "the whole 70" before meeting with Atkinson. *Id.* at 44. When she returned home, Thomas told Atkinson "that shit is way good def[initely] wanna be careful[.]" *Id.* at 45.

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<sup>5</sup> "Fire" means "really good stuff." *Tr. Vol. 2* at 147.

[6] On November 25, Atkinson texted Thomas, “[Caylor] said you [overdosed] again and he had to give you narcan is that true?” *Id.* Thomas responded that she did not know but she was “being really careful.” *Id.* at 46. Thomas asked Atkinson to tell Crane to hold some “subs” (suboxone) for her until the next week. *Id.* Thomas expressed she “really appreciate[d]” Crane holding the “subs” for her because “they’re hard to find” and she “hate[d] asking around and having to fuck w[ith] a bunch of different [people]” because she “like[d] to keep [her] circle super small[.]” *Id.* Atkinson told Thomas that Crane had some “fast” (methamphetamine) and would “front [her] a [little]” (give some to Thomas now, and Thomas would pay Crane back later). *Id.* at 47. Thomas said she was “def[initely] . . . gonna need some go for tomorrow to keep up w[ith] all the kiddos and everything else[.]” *Id.*

[7] On November 26, Thanksgiving Day, Caylor picked Thomas up from her parents’ house around 10:00 a.m. Thomas did not appear to be under the influence of drugs. Caylor waited in the car while Thomas went into Atkinson’s room. Thomas returned to Caylor’s car, and Caylor saw Thomas had what Caylor identified as heroin. Caylor drove Thomas to Caylor’s home, where Thomas and Caylor used the substance.

[8] Caylor dropped Thomas off at her parents’ house around 1:00 p.m., and Thomas went to her room. When she came back out of her room about an hour later, she was “glassy-eyed,” “nervous and . . . out of sorts,” and had “taken something.” *Tr. Vol. 2* at 51, 65. After dinner, Thomas spoke with her son’s father in the garage for about an hour. The two often communicated

when they were not together, but they never discussed drug use. After speaking with her son's father in the garage, Thomas stayed in her room for the rest of the day. Only Thomas' immediate family came to the house for Thanksgiving, and no one came to meet Thomas at the house for the rest of the day.

- [9] On November 27, Thomas spent the entire day at home, mostly in her bedroom. When Thomas' mother checked on her around 6:00 p.m. and 7:00 p.m., Thomas was sleeping in a chair.
- [10] On the morning of November 28, Thomas' father knocked on her bedroom door before leaving for work but received no response. A few hours later, Thomas' mother knocked on the door and—after receiving no response—picked the lock to open the door. She found Thomas in a chair slumped over her desk. Thomas' mother touched Thomas' shoulder, which was cold and “[k]ind of stiff.” *Id.* at 58.
- [11] Thomas' mother called 911. EMS arrived and determined Thomas had been dead for six to twelve hours. Drug paraphernalia surrounded Thomas' body: there was a syringe on the floor, two more syringes on the desk, “a green, leafy plan[t] material, a crystal-like substance in a baggie, . . . a small, tin container . . . that contained another baggie of a crystal-like substance, and there was another baggie containing . . . a tan-ish colored, powdery substance.” *Id.* at 110.
- [12] Indiana State Police Laboratory testing found the white crystal substance in one baggie consisted of 0.12 grams of methamphetamine. As for the items inside

the tin container, the white crystal substance consisted of 0.08 grams of methamphetamine, and the brown powder consisted of 0.15 grams of fentanyl with the presence of diphenhydramine. Another plastic bag contained methamphetamine residue. Thomas' blood test showed amphetamine at 98.3 nanograms per milliliter ("ng/mL"); methamphetamine at 477 ng/mL; the presence<sup>6</sup> of phenacetin (commonly used as a cutting agent) and salicylic acid; diazepam at 54.1 ng/mL; nordiazepam at 136 ng/mL; fentanyl at 16 ng/mL; and norfentanyl at 2.8 ng/mL.

[13] The State charged Atkinson in February 2021. While he was in jail, Atkinson made two video calls. On both calls, Atkinson said he had spoken with his attorney. During one call, he went on to say, "They're saying that I sold her—the meth that I sold her is what killed her." *State's Ex. 16* at 1:02. During the other call, Atkinson said, "They're trying to say that it was the meth I sold her that killed her." *State's Ex. 17* at 2:05.

[14] At Atkinson's jury trial, a forensic toxicologist testified the results of Thomas' blood screening revealed Thomas died of an overdose from "the mixture of methamphetamine as well as fentanyl." *Id.* at 104. Fentanyl is a schedule II controlled substance and is used in hospitals for pain relief. A therapeutic dose of fentanyl is one to three ng/mL. Fentanyl and heroin are both opioids and in their powder form "appear similar to the naked eye," but fentanyl is much more

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<sup>6</sup> "Presence" means the substances were not confirmed in the findings but reported as positive from the screen.

potent than heroin. *Id.* at 94. Methamphetamine is also a schedule II controlled substance and has no therapeutic dose. The forensic pathologist who conducted Thomas’ autopsy testified Thomas’ cause of death was “[a]cute mixed drug intoxication”<sup>7</sup> from methamphetamine and fentanyl. *Id.* at 235.

[15] A Muncie police officer testified that fentanyl has infiltrated the supply of heroin and other street drugs. He explained heroin is commonly cut with fentanyl “because it only takes a tiny amount of fentanyl to make that heroin much better—which means more people want that and it sells for a higher price if it’s better.” *Id.* at 136. Fentanyl is one hundred times more potent than morphine and fifty times more potent than heroin; and it takes only two milligrams of fentanyl to kill an average-sized man.

[16] An Eaton police officer testified about extracting data from Thomas’ phone. Although he saw messages between Thomas and the father of Thomas’ son, none of the communication related to purchasing drugs. The officer only found communication about buying drugs between Thomas and Atkinson.

[17] The jury found Atkinson guilty on all counts. The trial court entered judgment accordingly and sentenced Atkinson.

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<sup>7</sup> “Acute” means the deceased consumed the drugs shortly before passing away.

## Sufficiency of Evidence Standard of Review

[18] “When reviewing the sufficiency of the evidence to support a conviction, ‘appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict.’” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (quoting *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005)). It is the role of the fact-finder, not the appellate court, to “assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022) (quoting *Drane*, 867 N.E.2d at 146). Thus, we will affirm the conviction “unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021).

[19] On appellate review, “[i]t is not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Sallee v. State*, 51 N.E.3d 130, 133 (Ind. 2016) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). Rather, “evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Drane*, 867 N.E.2d at 147 (quotation omitted). And “we look at the ‘whole picture’ without taking a ‘divide-and-conquer approach’ to individual pieces of evidence.” *Young*, 198 N.E.3d at 1176–77.

## Sufficient Evidence Supports the Conviction for Count 2

[20] To prove Atkinson committed Level 5 felony conspiracy to commit dealing in a narcotic drug, the State was required to show Atkinson agreed with Crane to

knowingly or intentionally deliver fentanyl<sup>8</sup> and one of them performed an overt act in furtherance of the agreement. *See* I.C. §§ 35-48-4-1(a)(1) & 35-41-5-2.

[21] Atkinson argues the State failed to prove beyond a reasonable doubt Atkinson or Crane sold fentanyl to Thomas. He admits there was evidence he sold Thomas methamphetamine, but not fentanyl. And according to Caylor’s testimony, the drug Caylor and Thomas used a few days before Thomas’ death was heroin. There was no testimony Atkinson sold fentanyl to Thomas and no evidence of how long the fentanyl had been in Thomas’ room. Finally, Atkinson contends the methamphetamine found on Thomas’ desk was not cut with other substances, which—if Atkinson sold Thomas the methamphetamine—further proves he did not sell her fentanyl.

[22] Caylor testified that on November 26 Thomas purchased heroin from Atkinson and used it with Caylor, but there was additional evidence from which the jury could infer that what Caylor thought was heroin was fentanyl. The Muncie police officer testified that fentanyl has infiltrated the heroin supply, and fentanyl is often used to cut heroin. When in their powdered form, fentanyl and heroin “appear similar to the naked eye.” *Tr. Vol. 2* at 94.

[23] Even if the drug consumed by Caylor and Thomas on November 26 was not fentanyl, there is sufficient evidence Thomas purchased fentanyl from Atkinson

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<sup>8</sup> Fentanyl is a narcotic drug as outlined in Indiana Code Sections 35-48-1-20(1) and 35-48-2-6(c).

that week. Thomas messaged Atkinson about the purchase of several types of drugs. Thomas messaged Atkinson stating she preferred to buy her drugs from Atkinson and Crane because she liked to “keep [her] circle super small” and hated “asking around” for drugs and dealing with “a bunch of different [people].” *Ex. Vol. 4* at 46. Thomas’ phone did not contain messages with any other person about purchasing drugs.

[24] Fentanyl is one hundred times more potent than morphine and fifty times more potent than heroin. And Thomas and Atkinson knew the drug Thomas bought from Atkinson was exceptionally potent: Thomas overdosed at least once, possibly twice, on substances she purchased from Atkinson; Thomas twice told Atkinson she had to be careful while using the substance; and Atkinson charged more than the normal price, stating, “[I]t’s worth it . . . [because] it’s fire and hard to find good like that around[.]” *Id.* at 36. The Muncie police officer testified that fentanyl creates a higher demand and price.

[25] As for Atkinson’s contention there was no evidence about how long the fentanyl had been in Thomas’ room, there was evidence for the jury to infer Thomas used drugs as she bought them. Thomas consistently texted Atkinson leading up to the week of her death about the purchase of drugs, saying on different days she was “gonna need it come tomorrow,” *id.* at 33, and “gonna need some go for tomorrow to keep up w[ith] all the kiddos and everything else[.]” *id.* at 47.

[26] The evidence need not overcome every reasonable hypothesis of innocence to affirm the trial court’s judgment. See *Moore*, 652 N.E.2d at 55. Given Thomas’ messages with Atkinson and the testimony about fentanyl’s potency and infiltration into the heroin supply, there was sufficient evidence for the jury to infer Atkinson conspired with Crane to sell Thomas fentanyl.

### **Sufficient Evidence Supports the Conviction for Count 1**

[27] To prove Atkinson committed Level 1 felony aiding, inducing, or causing dealing in a controlled substance resulting in death, the State was required to show (1) Atkinson knowingly or intentionally aided, induced, or caused Crane to deliver a controlled substance to Thomas; (2) Thomas used, injected, inhaled, absorbed, or ingested the controlled substance; (3) resulting in Thomas’ death. See I.C. §§ 35-42-1-1.5(a) & 35-41-2-4. The Indiana Supreme Court has interpreted the language in Indiana Code Subsection 35-42-1-1.5(a)—“results in the death of a human being”—to mean the defendant’s conduct caused the death. *Yeary v. State*, 186 N.E.3d 662, 673 (Ind. 2022).<sup>9</sup> Thus, the State must prove “a causal connection between the controlled substance delivered by the defendant and the victim’s death.” *Id.*

[28] Atkinson admits there is sufficient evidence he sold methamphetamine to Thomas. Indeed, in the week leading up to Thomas’ death, Atkinson messaged

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<sup>9</sup> Although a different version of Indiana Code Section 35-42-1-1.5 was in effect when the defendant committed the crimes at issue in *Yeary* than when Atkinson committed the crimes at issue here, the relevant language did not change. Compare I.C. § 35-42-1-1.5 (2018) with I.C. § 35-42-1-1.5 (2019).

Thomas that Crane had some “fast” and could “front” Thomas some. On his video calls, Atkinson told his friends, “They’re trying to say that it was the meth I sold her that killed her.” *State’s Ex. 17* at 2:05. Methamphetamine was on Thomas’ desk and in her body when she died.

[29] But Atkinson argues the State failed to prove beyond a reasonable doubt the methamphetamine he sold Thomas was sufficient to cause Thomas’ death. He argues the State failed to disprove that the fentanyl alone could have caused Thomas’ death and “[i]f the State could not establish beyond a reasonable doubt that Atkinson provided the fentanyl to Thomas, then . . . the State cannot establish that Atkinson’s actions were both the direct and proximate cause of Thomas’ death[.]” *Appellant’s Br.* at 10–11.

[30] Atkinson also argues Indiana Code Section 35-42-1-1.5 does not bar him from asserting that the death was caused by something other than the drug he provided. Atkinson essentially argues Thomas’ death resulted solely from other substances she ingested, namely fentanyl, not from a combination of methamphetamine and other substances.

[31] We first note that the jury found Atkinson responsible for supplying methamphetamine *and* fentanyl to Thomas. Further, “[i]t is not a defense to an offense described in [Indiana Code Section 35-42-1-1.5] that the human being died . . . as a result of using the controlled substance . . . in combination with alcohol or another controlled substance with any other compound, mixture, diluent, or substance.” I.C. § 35-42-1-1.5(d)(2). This defense exclusion “does

not alter the State’s constitutional burden of proving causation.” *Yeary*, 186 N.E.3d at 674. Rather, it allows the State to prove causation by showing “that the drug distributed by the defendant was enough, by itself, to cause the death [or] that the distributed drug, while not enough to cause the death by itself, foreseeably combined with other substances to cause the death.” *Id.*

[32] Here, two witnesses testified about Thomas’ cause of death: acute *mixed* drug intoxication from the *combination* of methamphetamine and fentanyl. And there is evidence Thomas’ use of methamphetamine foreseeably combined with other substances to cause her death. In Thomas’ messages with Atkinson, the two discussed the purchase of “fast” and “subs,” or methamphetamine and suboxone. Caylor testified Thomas emerged from Atkinson’s motel room with what he identified as heroin. A few days before November 23, Thomas overdosed in Atkinson’s hotel room, and Atkinson performed CPR and used Narcan to revive Thomas. On November 25, Atkinson messaged Thomas, asking if she had overdosed again because Caylor told him she had. It was therefore foreseeable both that Thomas would use more than one substance purchased from Atkinson and that the combination of the substances would cause Thomas to overdose and die. There is sufficient evidence to support Atkinson’s conviction for Count 1.

## Conclusion

[33] Concluding sufficient evidence supports Atkinson’s convictions, we affirm.

[34] Affirmed.

Altice, C.J., and Weissmann, J., concur.