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DISTRICT II

September 20, 2023

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

2022AP1613-CR State of Wisconsin v. Richard J. Weczera (L.C. #2019CF1527)

Before Neubauer, 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).

Richard J. Weczera appeals from a judgment entered after a jury found him guilty of operating while under the influence of an intoxicant or other drug (OWI), eighth offense, contrary to WIS. STAT. § 346.63(1)(a) (2021-22).¹ He contends the evidence was insufficient to support his conviction. Based upon our review of the briefs and Record, we conclude at

¹ WISCONSIN STAT. § 346.63(1)(a) applies to convictions for seventh, eighth, and ninth offenses. Weczera was also convicted of failure to install an ignition interlock device, contrary to WIS. STAT. § 347.413(1), and operating a vehicle while revoked, contrary to WIS. STAT. § 343.44(1)(b). He does not challenge those convictions on appeal.

All subsequent references to the Wisconsin statutes are to the 2021-22 version unless otherwise noted.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

Police arrested Weczera in October 2019 following a series of incidents where witnesses reported Weczera as a potentially impaired driver. The State ultimately charged Weczera with OWI as an eighth offense. The Amended Information alleged that Weczera had “operate[d] a motor vehicle while under the influence of a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog” and that he was therefore “incapable of safely driving[.]” The State also charged him with failure to install an ignition interlock device in his car and with operating a motor vehicle while revoked.

At Weczera’s trial, the State presented testimony from multiple witnesses. Adam St. Arnold, a citizen witness, testified that he had concerns about Weczera’s driving because he saw Weczera swerving all over the road, which forced St. Arnold to swerve away from Weczera to avoid a collision. St. Arnold told the jury that Weczera’s car had substantial front-end damage and that he and another driver on the road attempted to stop Weczera’s car by boxing him in with their vehicles. Weczera, however, evaded the attempted stop. St. Arnold’s car had a dashboard camera video, which was played for the jury, and the video showed Weczera’s erratic driving and refusal to stop. St. Arnold and the other citizen witness both called 911 to report Weczera as a potentially impaired driver.

The next two witnesses at Weczera’s trial were managers at Crown Equipment Corporation/Crown Lift Trucks (Crown), a business located at 5150 South Towne Drive in New Berlin. The first manager, John Jones, testified that he called 911 after Weczera’s damaged

and smoking car pulled into Crown's parking lot. Jones told the jury that the parking lot has surveillance cameras, which showed Weczera's car driving through the lot and then parking, followed by Weczera exiting his car and heading toward the wooded area that separates Crown from another business directly to the north. The parking lot surveillance video was played for the jury.

The second Crown manager, Matt Anderson, also testified about Weczera's car pulling into and parking in Crown's lot. Anderson said that he went outside to investigate after employees reported seeing a damaged car with smoke pouring out of it driving past Crown's windows. Anderson approached Weczera, who was then parked in Crown's lot, to see if Weczera was okay. Anderson testified that Weczera was gathering items from his car and putting them in a bag and that he "seemed like he was a little dizzy" and "very busy, kind of on edge, kind of shaken up." Weczera asked Anderson if he could leave his car there overnight, got out of the car, and walked away from Anderson. Anderson called the police, but Weczera was gone when the police arrived.

Police Officer Melissa Romenesko testified next. She was initially dispatched after the police received reports about a "possible drunk driver," but she did not locate the driver on the roadway. She was subsequently dispatched to Crown, where she found a car matching the description of the car from the initial drunk-driver reports. She obtained Crown's surveillance video of the parking lot and then learned that a police sergeant had observed a man who matched the description of the drunk driver—who was later identified as Weczera—exit the wooded area next to the business just north of Crown. She testified that the sergeant, who did not testify at trial, saw Weczera get into another car driven by a woman who was later identified as Weczera's sister. Romenesko then left Crown to go assist the sergeant, who conducted a traffic stop of the

sister's car. Romenesko said that after Officer Crystal Halliday arrived, Halliday took over the investigation.

Halliday, a certified drug recognition expert, confirmed that she was initially dispatched to the location of a "possible intoxicated driver" who was "swerving all over" and who almost caused "multiple accidents[.]" Upon arrival, she learned that two other drivers had attempted to stop the swerving car because they saw it as a "threat on the roadway." Halliday was unable to locate the driver in the reported area, and a short time later, she was sent to Crown after obtaining information from a Crown employee that there was "a vehicle out in their parking lot[] [that] had heavy damage[] [and] appeared to be smoking" and that "the operator [of the car] was suspicious" and "appeared to be really dazed." Halliday personally observed Weczera's car, saw the "fresh damage" "consistent with someone who had recently been in an accident[.]" and "pieced together that it was the same vehicle involved in the previous possible intoxicated driver call in."

Halliday explained that while searching the area around Crown in an attempt to locate the driver, she heard that her sergeant had observed a man "match[ing] the description" of the intoxicated driver "attempting to get into a vehicle on Town Drive just north of" the Crown parking lot. Halliday then went to that location and saw police had already handcuffed and arrested Weczera for driving while revoked. Halliday read Weczera his *Miranda*² rights and then spoke with him. She testified that Weczera appeared restless, agitated, and anxious and repeatedly said to her that he "fucked up." Halliday told the jury that Weczera said he wanted to

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

tell her “some stuff but didn’t want to tell [her] everything, because he didn’t want to get in trouble.” She further testified that Weczera admitted that: (1) he was driving his car and had hit something but did not want to tell her what he struck; (2) some men tried to stop him and he tried “to get away from them”; and (3) he was a heroin user. Halliday then told the jury about her observations of Weczera: “he went from kind of restless to agitated to fast talking to slow talking, slow responses, slow moving. He exhibited what we call a drunk-like behavior throughout.” According to Halliday, he was also fidgety and engaged in behaviors suggesting he was using multiple drugs. She also noticed he had constricted pupils, which signals narcotic use, and his behaviors suggested “poly-drug use, meaning there is multiple drugs on board and your body is kind of having this competition with each drug, which is why each drug is going to show a little bit of it as it kind of goes throughout.”

Halliday suspected Weczera was impaired and conducted field sobriety tests and drug recognition tests, which reflected impairment. She told the jury that it was her opinion that Weczera “was under the influence of a central nervous system depressant, a central nervous system stimulant, a narcotic analgesic, and he was impaired and unable to operate a motor vehicle safely.” Halliday also testified that Weczera told her that she knew what drug he was on, but he could not tell her the name of it because he wanted to fight the OWI in court. She also told the jury that she had searched his car and that other officers had searched the wooded area but did not find any drugs.

Weczera consented to a blood test, which was sent to the State Crime Lab. The State’s last witness was Amy Sasman, the toxicologist from the lab, and she explained the blood test results to the jury. According to Sasman, Weczera’s blood tested positive for the presence of three drug classes: (1) benzodiazepines; (2) opiates; and (3) amphetamines. She testified that a

person can become impaired by using these drugs and that after the general screening test, which indicated the three classes of drugs in Weczera's blood, the lab conducted more specific confirmatory testing to try to identify the specific drug from each of the three classes. The confirmatory test for amphetamine showed Weczera had an amphetamine in his system. The confirmatory testing for the other two classes, however, could not detect any specific benzodiazepines or opiates. Sasman explained that this is because the lab only has the capability of testing for twelve specific benzodiazepines and seven different opiates and that there are a number of different designer drugs and new drugs that their lab tests are unable to identify. She also explained that these drugs break down quickly and that if the specific drug they do have tests for is below the lab's detectable threshold levels, the test will not detect it. Sasman explained that heroin, as an example, may only be detected in the blood if the blood is tested within fifteen minutes. She confirmed that many of the behaviors Halliday described about Weczera are common signs of impairment seen in a person who has consumed the drug classes found in his blood. After Sasman testified, the State rested.

Weczera did not testify or call any witnesses. The jury found him guilty of all three charges. Weczera raises a single issue on appeal—he claims the evidence was insufficient to sustain the jury's verdict finding him guilty of OWI. We disagree.

When reviewing the sufficiency of the evidence, we “may not substitute [our] judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). “If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt,” we “may not

overturn a verdict even if [we] believe[] that the trier of fact should not have found guilt based on the evidence before it.” *Id.*

We conclude the evidence presented at Weczera’s trial was sufficient to support the jury’s finding. As the court instructed the jury, in order to prove Weczera guilty of OWI under these circumstances, the State was required to prove two elements: (1) he “operated a motor vehicle on a highway”; and (2) he did so while “under the influence of an amphetamine, opiate, benzodiazepine, or any combination thereof to a degree which renders him incapable of safely driving[.]” *See* WIS. STAT. § 346.63(1)(a). To show that Weczera drove while under the influence of these drugs, the State had to prove that his “‘ability to operate’ the car was ‘impaired because of consumption of’” any combination of an amphetamine, opiate, and benzodiazepine. *See State v. McAdory*, 2021 WI App 89, ¶22, 400 Wis. 2d 215, 968 N.W.2d 770.

Weczera does not dispute that the evidence at trial was sufficient to prove the first element—that he operated a motor vehicle on a highway—and the Record confirms that evidence was presented to support this element. Specifically, the jury heard Officer Halliday’s testimony that Weczera admitted to driving and hitting something, viewed videos of Weczera driving his car on a highway, and heard testimony about witnesses observing Weczera driving his car on a highway.³

³ Weczera argues that witness St. Arnold testified only about observing erratic driving in Milwaukee County and that St. Arnold could not identify the driver. St. Arnold, however, provided a dashboard camera video from his car to police, and the State played that video for the jury at trial. There is certainly sufficient evidence in the Record from which the jury could conclude that the car St. Arnold observed driving in Milwaukee County was the same vehicle that was ultimately found parked in the Crown parking lot, located in Waukesha County, just a short time later.

Thus, we focus on the second element—whether a reasonable jury could find beyond a reasonable doubt that when Weczera operated his car, he was under the influence such that his ability to operate his car was impaired. Weczera contends that because the State failed to introduce evidence of the specific type of drug or the actual amount of drug in Weczera’s system, there is insufficient evidence to support his conviction. Weczera relies on *McAdory* in contending that a specific quantity and amount is required to support a jury’s verdict for an OWI conviction based on drug-use impairment. That is not what *McAdory* held. Rather, *McAdory* concluded the evidence was sufficient to support the drug-impaired conviction despite the absence of evidence as to quantity because the record contained “extensive circumstantial evidence of impairment[.]” *Id.*, ¶29.⁴

The Record in Weczera’s case contains sufficient evidence from which a reasonable jury could find that Weczera was under the influence of a combination of drugs that impaired his ability to safely drive. The jury heard testimony from St. Arnold, who described Weczera’s impaired driving to the jury, and the jury saw videos of Weczera’s impaired driving. It also heard testimony from the Crown manager who talked to Weczera when he parked his car, left his car in Crown’s parking lot, and walked away. An officer testified about Weczera exiting the wooded area just north of where he left his car. Officer Halliday, a drug recognition expert, told the jury about her interactions with Weczera, the statements he made implicating that he was driving while impaired, and that he demonstrated behaviors and physical indicators exhibited by impaired drivers. Halliday also testified that she conducted field sobriety tests, which convinced

⁴ The *McAdory* court reversed *McAdory*’s conviction based on a due process violation related to jury instructions. *State v. McAdory*, 2021 WI App 89, ¶71, 400 Wis. 2d 215, 968 N.W.2d 770.

her Weczera was under the influence of a number of drugs that impaired his ability to safely operate his car. Sasman, the lab toxicologist, testified about the results from Weczera's blood tests and explained the positive general results and the more specific confirmation results. She also explained the challenges the lab has in detecting the variations of these drugs and how quickly they dissipate.

Although a jury could have rejected this testimony based on the defense theory about the lack of specific lab results, it did not do so. Based on all of the evidence presented to the jury, together with reasonable inferences drawn therefrom, a jury acting reasonably could certainly find beyond a reasonable doubt that Weczera drove while under the influence of a combination of drugs that made it unsafe for him to operate a motor vehicle.

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals