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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

May 9, 2018

To:

Hon. Mark T. Slate
Circuit Court Judge
P.O. Box 3188
Green Lake, WI 54941

Andrew Joseph Christenson
District Attorney
P.O. Box 3188
Green Lake, WI 54941

Amy Thoma
Clerk of Circuit Court
Green Lake County Courthouse
P.O. Box 3188
Green Lake, WI 54941

Walter Arthur Piel Jr.
Piel Law Office
Ste. K-200
500 W. Silver Spring Dr.
Milwaukee, WI 53217

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

2017AP2237

In the matter of the refusal of Cole William Gohlke:
State of Wisconsin v. Cole William Gohlke (L.C. #2017TR256)

Hagedorn, J.¹

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).

Cole William Gohlke appeals from a judgment of conviction for refusal to submit to chemical testing in violation of WIS. STAT. § 343.305(9) (2015-16). Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

At about 9:57 p.m. on March 5, 2017, Deputy Tyler Hoerig pulled over Gohlke's vehicle for speeding on County K in Green Lake County. Hoerig testified at the refusal hearing that as he conducted the stop, he suspected that Gohlke may be intoxicated. Hoerig testified that he "smelled a strong odor of intoxicating beverages emitting from inside the vehicle." Hoerig also noted that Gohlke's eyes were glassy and bloodshot and his speech was slurred. Indeed, when asked if he had been drinking, Gohlke admitted to consuming approximately four to five beers earlier that evening. Hoerig proceeded to conduct a variety of field sobriety tests and a preliminary breath test. Hoerig testified that Gohlke failed each of these tests. Gohlke then refused to undergo a chemical blood test and was subsequently charged with refusing to submit to a chemical test in violation of WIS. STAT. § 343.305(9).

Gohlke requested a refusal hearing to contest his charges pursuant to WIS. STAT. § 343.305(9). Though not actually present, Gohlke was represented by his attorney at the October 16, 2017 hearing. Following Hoerig's testimony, Gohlke's attorney argued that the State had not properly established identification. The court then asked Hoerig whether he identified Gohlke with a Wisconsin photo driver's license. Hoerig responded that he could not "recall off the top of [his] head." The court, however, was satisfied that Hoerig had properly identified the driver as Gohlke through his testimony. Additionally, the Informing the Accused form was introduced into evidence, and it indicated that Gohlke was identified by his driver's license.

Gohlke's sole argument on appeal is that the State failed to establish Gohlke's identity as the driver. While he admits that "a courtroom identification is unnecessary when sufficient other evidence" establishes identity, Gohlke argues that the State presented insufficient evidence to permit the court to infer that he committed the violation in question.

When considering a sufficiency of the evidence challenge to the circuit court's factual findings, we "apply a highly deferential standard of review." *Jacobson v. American Tool Cos.*, 222 Wis. 2d 384, 389, 588 N.W.2d 67 (1998). We will not disturb the court's "determination and judgment ... if more than one inference can be drawn from the evidence." *Id.* Furthermore, "[t]he circuit court's findings of fact will not be set aside unless we conclude that they are clearly erroneous." *Id.* at 389-90. Thus, if the evidence supports a reasonable inference that Gohlke was the operator of the vehicle, the circuit court's factual finding must stand.

At the refusal hearing, Hoerig could not immediately recall whether he had identified Gohlke by his Wisconsin driver's license. Throughout his testimony, however, he identified the driver as Gohlke several times. Additionally, the Informing the Accused form, presented as evidence and admitted into the record at the hearing, explicitly notes that Hoerig identified Gohlke by his driver's license. Based on this evidence, one may reasonably infer that Gohlke was the driver and therefore committed the offense. Accordingly, the circuit court's finding that the State sufficiently established Gohlke's identity is not clearly erroneous, and we affirm.

Upon the foregoing reasons,

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

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

Sheila T. Reiff
Clerk of Court of Appeals