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**DISTRICT II**

June 6, 2018

To:

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

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2017AP2070                      Washington County v. Angela Ruth Hermann  
(L.C. #2017TR1524, 2017TR1525)

Hagedorn, J.<sup>1</sup>

**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).**

Angela Ruth Hermann appeals from an order of the circuit court finding her guilty of operating a motor vehicle while intoxicated (OWI) and operating a motor vehicle with a prohibited alcohol concentration (PAC). 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. We affirm.

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

Hermann was cited for OWI and PAC, first offenses. After an unsuccessful motion to suppress, the case proceeded to a bench trial.<sup>2</sup> Deputy Dirk Stolz—the arresting officer—was the sole witness. Stolz explained that he stopped Hermann for speeding and observed that she had bloodshot, glossy eyes; her speech was slurred; and he smelled “a strong odor of alcoholic beverages.” Stolz also observed numerous clues of impairment during the field sobriety tests, which prompted Stolz to arrest Hermann for OWI. He administered an intoximeter breath test, which indicated Hermann’s alcohol concentration was 0.16g/210L. Hermann did not testify or appear in person at trial but was represented by counsel. The circuit court found Hermann guilty of both OWI and PAC and ordered her license revoked for seven months, imposed a forfeiture of \$924.50, and additionally required an ignition interlock device for twelve months. Hermann appeals pro se.

It is somewhat difficult to discern the precise contours of Hermann’s lengthy argument. And her brief does not contain any citation to legal authority. However, it is clear that she generally takes issue with Stolz’s testimony at trial and maintains that the circuit court should not have found her guilty based on that testimony. She goes through the transcript in exhaustive detail pointing out what she believes are inconsistencies in Stolz’s testimony that undermine his credibility.<sup>3</sup> To the extent she attempts to raise any additional arguments, they are undeveloped

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<sup>2</sup> Hermann does not raise any challenge related to her failed motion to suppress.

<sup>3</sup> In support of her attack on Stolz’s credibility, Hermann refers to multiple items not included in the record, including photographs and her personal averments concerning what happened the night she was arrested. Hermann did not testify at trial, nor were the photographs entered as evidence. On appeal, we are confined to the record before us; we do not consider anything outside the record.

and we do not address them.<sup>4</sup> *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Although we extend some leniency to pro se litigants, it is up to Hermann to develop her arguments. *See id.* We cannot serve as both advocate and court. *Id.*

When reviewing the sufficiency of the evidence, the test is “whether this court can conclude that the trier of fact could, acting reasonably, be convinced to the required degree of certitude by the evidence which it had a right to believe and accept as true.” *State v. Burkman*, 96 Wis. 2d 630, 643, 292 N.W.2d 641 (1980). “Reversal is only required when the evidence considered most favorably to the state and the conviction is so insufficient in probative value and force that it can be said as a matter of law that no trier of facts acting reasonably could be convinced” the guilt had been established to the requisite degree of certainty. *See id.* After a bench trial, a circuit court’s findings of historical fact “shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” WIS. STAT. § 805.17(2). The circuit court “is the ultimate arbiter of the credibility of the witnesses.” *Gehr v. City of Sheboygan* 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977).

To find Hermann guilty of OWI, the circuit court had to find (1) Hermann operated a motor vehicle on the highway (Hermann does not dispute that she drove on a highway) and (2) that she was under the influence of an intoxicant at the time she drove. *See* WIS. STAT.

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<sup>4</sup> Hermann also insists that her “citation stated [her alcohol concentration] was below .16” and the law “states that a level of .16 or above warrants” the installation of an interlock device. Therefore, she reasons, the court should not have required her to install an interlock device on her vehicle. Our review of the PAC citation and the results of the intoximeter test indicate Hermann had a concentration of 0.16g/210L. The OWI citation did not indicate an alcohol concentration. Hermann appears to be mistaken on the facts. In any event, she does not develop this argument or cite to any applicable legal authorities.

§ 346.63(1)(a); WIS JI—CRIMINAL 2663A. Stolz observed numerous clues of impairment during the field sobriety tests, smelled a strong odor of intoxicants, observed that Hermann had bloodshot eyes, and “noticed that she had some slurred speech.” Combined with the intoximeter result of 0.16g/210L, this was ample evidence for the circuit court to conclude that Hermann was intoxicated. We are unpersuaded by Hermann’s pleas that we discredit Stolz’s testimony. The circuit court found him credible; we are not at liberty to disregard that determination.

As to the PAC citation, the circuit court had to find that (1) Hermann drove on a highway and (2) that she had a prohibited alcohol concentration while she did so—in this case, anything 0.08g/210L or above. WIS. STAT. §§ 346.63(1)(b), 340.01(46m) (prohibited alcohol concentration for a person with “2 or fewer prior convictions” for OWI is “0.08 or more”); WIS JI—CRIMINAL 2668. Here, the intoximeter test revealed an alcohol concentration of twice the legal limit; the circuit court’s finding that Hermann had a concentration above 0.08g/210L was eminently reasonable. Even if we were to consider Hermann’s posttrial factual assertions concerning her alcohol consumption, we cannot say that the circuit court’s conclusion she had a prohibited alcohol concentration was unreasonable.

IT IS ORDERED that the order 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.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*