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DISTRICT III

October 16, 2018

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

2017AP1864-CRNM State of Wisconsin v. John A. Litteral (L. C. No. 2016CF833)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for John Litteral has filed a no-merit report concluding no grounds exist to challenge Litteral's convictions for operating while intoxicated (OWI), fifth offense, and possession of tetrahydrocannabinols (THC). Litteral has filed a response. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude

there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21 (2015-16).¹

The State charged Litteral with possession of THC, OWI, and operating with a prohibited alcohol concentration (PAC), the latter two counts as a fifth offense. Litteral moved to dismiss the complaint, claiming police officers lacked both reasonable suspicion for a traffic stop and probable cause for his arrest. The circuit court denied the motion after a hearing. Litteral was convicted upon a jury's verdicts of the crimes charged.² Out of a maximum possible six-and-one-half-year sentence, the circuit court imposed concurrent sentences resulting in an aggregate four-year term, consisting of two years' initial confinement followed by two years' extended supervision.

Although the no-merit report does not specifically address it, any challenge to the circuit court's denial of Litteral's motion to dismiss would lack arguable merit. Officers may stop and detain individuals if they have reasonable suspicion that the individual committed a crime. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). Whether the facts of a given case constitute probable cause to arrest is a question of law that we decide independently. *State v. Kasian*, 207 Wis. 2d 611, 621, 558 N.W.2d 687 (Ct. App. 1996). "Probable cause exists where the totality of the circumstances within the arresting officer's knowledge at the time of the arrest would lead a reasonable police officer to believe that

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The PAC count was dismissed prior to sentencing on the State's motion pursuant to WIS. STAT. § 346.63(1)(c), which provides that if a person is found guilty of both offenses "for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing."

the defendant probably committed a crime.” *State v. Riddle*, 192 Wis. 2d 470, 476, 531 N.W.2d 408 (Ct. App. 1995).

At a motion hearing, the arresting officer testified that he observed a vehicle accelerate out of a parking stall “faster than normal.” The officer noticed the driver look back at the officer on a couple of occasions as the driver maneuvered down the street. The officer watched as the driver stopped, operated the vehicle in reverse for fifty to seventy-five feet for no apparent reason, and then drove forward before changing direction. The officer ultimately initiated a stop after observing the vehicle make a right turn while accelerating “rapidly enough to cause the tires of the vehicle to squeal.” The officer then approached the driver’s side window and informed the driver, identified as Litteral, that he was stopped “because it seemed like he was having trouble driving.” When the officer asked Litteral about driving his car in reverse down the street and squealing the tires, Litteral initially denied backing down the street or squealing the tires.

During his interaction with Litteral, the officer observed that Litteral’s speech was “somewhat slurred,” his eyes “appeared red and glassy,” and “he just acted abnormal.” Litteral denied using any alcohol or drugs, and, when the officer mentioned again that he observed Litteral drive in reverse down the street, Litteral stated he was “backing to get out of the way of a vehicle.” The officer testified he did not recall any vehicle that would have interfered with Litteral’s travel. The officer was unable to connect any registration to the vehicle’s license plate. When the officer directed Litteral to exit the vehicle in order to perform field sobriety tests, Litteral was “somewhat unsteady on his feet” and leaned against the back of the vehicle while talking with the officer. The officer detected the odor of intoxicants on Litteral at this time. When asked about the odor, Litteral again denied drinking alcohol, but claimed someone spilled a beer on his shirt. Litteral ultimately refused to perform field sobriety tests, and the officer

placed him under arrest for OWI. Given the totality of the circumstances, there is no arguable merit to any claim that the circuit court erred by concluding the officer had both reasonable suspicion to stop Litteral and probable cause to arrest him.

The no-merit report addresses whether there was sufficient credible evidence to support the guilty verdicts; whether the circuit court properly exercised its sentencing discretion; and whether Litteral's trial counsel was ineffective by failing to pursue a suppression motion in addition to the motion to dismiss. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that there is no arguable merit to these possible issues.

In his response to the no-merit report, Litteral appears to raise issues about probation payments he has purportedly made in an unrelated Dunn County case and alleges an attempt on his life by his mother. Litteral also claims, in conclusory fashion, that Eau Claire County is biased against him. None of his stated concerns would support a non-frivolous challenge to his present convictions or sentences.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Melissa Petersen is relieved of further representing John Litteral in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals