



OFFICE OF THE CLERK
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

March 20, 2019

To:

Hon. Joseph W. Voiland
Circuit Court Judge
Ozaukee County Circuit Court
1201 S. Spring St.
Port Washington, WI 53074

Benjamin Lindsay
Asst. District Attorney
1201 S. Spring St.
Port Washington, WI 53074

Marylou Mueller
Clerk of Circuit Court
Ozaukee County Circuit Court
1201 S. Spring St.
Port Washington, WI 53074-0994

Joseph R. Reback
333 W. Paradise Dr.
West Bend, WI 53095-4905

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

2018AP1857-FT Ozaukee County v. Tracy Vang (L.C. #2018FO15)

Before Reilly, P.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).

Tracy Vang appeals from a judgment of conviction for underage possession or consumption of alcoholic beverages. Vang challenges the sufficiency of the evidence to establish venue in Ozaukee County. Based upon our review of the briefs and record, we

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

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

Vang was issued a citation for violating Ozaukee County Ordinance 8.09(1)(b) (July 14, 1994),² adopting WIS. STAT. § 125.07(4)(b), prohibiting the possession or consumption of alcoholic beverages by underage persons. Vang was the passenger in a vehicle that was stopped by an Ozaukee County deputy sheriff. The deputy arrested the driver for operating while intoxicated and also noted that Vang was “passed out” in the front seat and she was difficult to wake up. When Vang exited the vehicle, the deputy noted slow and slurred speech, bloodshot eyes, and a strong odor of intoxicants emanating from her. After learning that Vang was under the age of twenty-one, she was issued the citation. The matter was tried before the circuit court, and Vang was found guilty of the ordinance violation.

Vang argues on appeal that under WIS. STAT. § 971.19(1) “[c]riminal actions shall be tried in the county where the crime was committed, except as otherwise provided” and there is “no evidence that [Vang] possessed or consumed alcoholic beverages in Ozaukee County.”

Venue is not an element of a crime; it simply refers to the place of trial. *See State v. Dombrowski*, 44 Wis. 2d 486, 501, 171 N.W.2d 349 (1969), *overruled in part on other grounds by State v. McDougal*, 68 Wis. 2d 399, 228 N.W.2d 671 (1975). The State must prove venue beyond a reasonable doubt, *id.* at 502, but venue “may be established by proof of facts and circumstances from which it may be inferred,” *Smazal v. State*, 31 Wis. 2d 360, 363, 142

² The citation issued to Vang references Ozaukee County Ordinance 8.09(1)(b), but we note that 8.09(1)(b) addresses an underage person who “possesses or consumes alcoholic beverages on licensed premises.” The record does not suggest that Vang was cited for drinking on licensed premises; therefore, we believe that she violated ordinance 8.09(2), which provides that “[i]t is a violation of this ordinance for any underage person who is not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age to knowingly possess or consume alcoholic beverages,” subject to exceptions for employment.

N.W.2d 808 (1966). We will not reverse a conviction for lack of venue unless the evidence, viewed most favorably to the prosecution and conviction, is “so insufficient that there is no basis upon which a trier of fact could determine venue beyond a reasonable doubt.” *State v. Swinson*, 2003 WI App 45, ¶19, 261 Wis. 2d 633, 660 N.W.2d 12.

Here, it is uncontested that the traffic stop occurred in Ozaukee County. Further, the deputy’s testimony provided sufficient direct evidence that Vang consumed alcoholic beverages. There is also no evidence that Vang consumed alcoholic beverages in a different county as Vang testified that she had only consumed water and juice that day in Milwaukee County. Accordingly, viewing the evidence in a light most favorable to the prosecution, there exists sufficient evidence from which the circuit court could reasonably infer that the underage consumption of alcoholic beverages occurred in Ozaukee County.

Vang’s reliance on *State v. Griffin*, 220 Wis. 2d 371, 381, 384-85, 584 N.W.2d 127 (Ct. App. 1998), is misplaced. The statute at issue in *Griffin* prohibited possession of a controlled substance, while the ordinance in this case addresses both possession and consumption of alcoholic beverages. The circuit court correctly ruled that the evidence sufficiently established venue in Ozaukee County.

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.

Sheila T. Reiff
Clerk of Court of Appeals