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**DISTRICT II**

July 17, 2019

*To:*

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

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2018AP647-CR                      State of Wisconsin v. Lee C. Lorbecke (L.C.#2014CF1069)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**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).**

Lee Lorbecke appeals from a judgment convicting him of operating a motor vehicle while intoxicated (sixth offense). On appeal, he challenges the circuit court's denial of his motion to suppress. Based upon our review of the briefs and record, we conclude at conference

that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup> We conclude that the police officer’s decision to relocate Lorbecke to a nearby police station for field sobriety tests did not convert the temporary detention on reasonable suspicion into an arrest without probable cause. We affirm the circuit court’s denial of Lorbecke’s motion to suppress.

A police officer came upon Lorbecke and his vehicle after it struck a pole. The officer’s observations about Lorbecke’s condition (droopy eyes, slow and slurred speech, and “delayed” movements) led him to determine that field sobriety tests were necessary to investigate whether Lorbecke had been driving while impaired. Owing to unfavorable conditions at the scene of the crash, the officer relocated Lorbecke to the police station, 4.2 miles away from the crash scene, to conduct field sobriety tests. After he failed to complete field sobriety tests, Lorbecke was arrested for operating while intoxicated.<sup>2</sup>

Lorbecke moved to suppress evidence against him on the ground that transporting him to the police station for field sobriety tests converted a temporary detention into an arrest without probable cause. After the circuit court denied his motion to suppress, Lorbecke pled no contest to sixth offense operating while intoxicated.

Whether evidence should be suppressed presents a question of constitutional fact. *State v. Floyd*, 2017 WI 78, ¶11, 377 Wis. 2d 394, 898 N.W.2d 560. We will uphold the circuit court’s findings of historical fact unless they are clearly erroneous. *Id.* We independently apply the relevant constitutional principles to those historical facts, but we benefit from the circuit

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

<sup>2</sup> Lorbecke’s blood revealed the presence of amphetamines and alprazolam.

court's analysis. *Id.* The circuit court was “the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness’s testimony.” *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345.

Where reasonable grounds exist, moving a suspect in the general vicinity of the initial temporary detention does not convert “what would otherwise be a temporary seizure into an arrest.” *State v. Quartana*, 213 Wis. 2d 440, 446, 570 N.W.2d 618 (Ct. App. 1997). When a person subject to a temporary investigative detention is relocated, courts employ a two-part inquiry to determine whether the relocation converted the detention to an arrest: “was the person moved within the ‘vicinity’” and “was the purpose in moving the person within the vicinity reasonable?” *Id.*

The circuit court’s findings of fact about why the officer decided to conduct field sobriety tests at the police station are not clearly erroneous. *See Floyd*, 377 Wis. 2d 394, ¶11. The officer was the only witness at the hearing on the motion to suppress, and the court accepted the officer’s testimony. Having observed the crash scene and signs that Lorbecke was impaired (droopy eyes, slow and slurred speech, and “delayed” movements), the officer had reasonable suspicion that Lorbecke was operating under the influence of a substance such that further detention and investigation were required. The officer testified that the temperature was extremely low and the narrow roadway at the crash scene did not offer a safe, level area to conduct field sobriety tests. The officer decided to move Lorbecke to a warm garage at the police department 4.2 miles and less than fifteen minutes away because the department was the most easily accessible location under all of the circumstances. The officer explained that attempting to use another location would have caused delay in commencing the field sobriety tests. Based on this evidence, the court determined that the officer moved Lorbecke within the vicinity of the temporary detention and had a reasonable basis for relocating him to a more favorable and safer field sobriety testing location.

Based on the circuit court’s findings, we conclude that the *Quartana* two-part inquiry is satisfied. We conclude that the officer relocated Lorbecke within the vicinity of the temporary detention when he transported him to a place 4.2 miles away for the reasonable purpose of field sobriety testing. See *Quartana*, 213 Wis. 2d at 446; cf. *State v. Blatterman*, 2015 WI 46, ¶26, 362 Wis. 2d 138, 864 N.W.2d 26 (relocating ten miles from the temporary detention does not constitute “within the vicinity”). Relocating Lorbecke did not convert his temporary detention into an arrest. See *Quartana*, 213 Wis. 2d at 446. Therefore, there was no basis to suppress evidence against him.<sup>3</sup>

Upon the foregoing reasons,

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.

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

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<sup>3</sup> The parties cite unpublished decisions of this court. Under WIS. STAT. RULE 809.23(3)(b), we elect not to discuss these unpublished cases.