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DISTRICT II

August 5, 2020

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

2019AP1091-CR State of Wisconsin v. Ryan Joseph Drunasky (L.C. #2017CF587)

Before Neubauer, C.J., Reilly, P.J., and Davis, 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).

Ryan Joseph Drunasky appeals from a judgment convicting him of operating a motor vehicle with a restricted controlled substance as a sixth offense. He contends that the circuit court erroneously exercised its discretion in denying his motion to withdraw his plea. 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).¹ We affirm.

In the early morning hours of September 26, 2017, Sheriff's Deputy Eric Brushert observed a vehicle in a roadside ditch. He approached the vehicle and made contact with Drunasky, who identified himself as the driver. Brushert asked Drunasky what happened, and Drunasky explained that he was eating soup he bought at a bar when his vehicle went into the ditch. Drunasky could not provide the name of the bar. Nor could he articulate that he knew where he was.

While speaking with Drunasky, Brushert detected an odor of alcohol coming from him. He knew that Drunasky had five prior operating while intoxicated offenses and was subject to a reduced .02 prohibited alcohol concentration limit. Brushert asked Drunasky to perform field sobriety tests, which Drunasky passed while exhibiting some clues for possible impairment. Brushert then administered a preliminary breath test, which revealed a breath alcohol concentration result of .022. He placed Drunasky under arrest.

Upon his arrest, Drunasky refused to consent to evidentiary chemical testing of his blood. Accordingly, he was transferred to a local hospital where Brushert applied for a search warrant. Based upon Brushert's telephonic testimony, a court commissioner signed a search warrant authorizing police to secure a blood sample from Drunasky for evidence of the crimes of operating a motor vehicle while intoxicated and operating a motor vehicle with a prohibited alcohol concentration.

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

A little more than a month later, the state crime lab submitted a report indicating that ethanol was not detected in Drunasky's blood sample. Roughly six months after that, the lab submitted a supplemental report concerning additional chemical analyses. According to that report, cocaine metabolites were detected in Drunasky's blood sample. The State subsequently charged Drunasky with operating a motor vehicle with a restricted controlled substance as a sixth offense along with several other offenses.²

Drunasky moved to suppress the supplemental report, asserting, among other things, that Brushert lacked probable cause to require him to submit to the preliminary breath test and later arrest him. After a hearing on the matter, the circuit court denied the motion. Drunasky then entered a no contest plea.

Prior to sentencing, with new counsel representing him, Drunasky moved to withdraw his plea. He claimed that the supplemental report should have been suppressed because it was the product of an unconstitutional search of his blood for substances other than alcohol. Again, the circuit court denied the motion, concluding that Drunasky "failed to demonstrate ... that there is any good reason other than him changing his mind, to be allowed to withdraw his plea."

Ultimately, the circuit court withheld sentence and placed Drunasky on probation for four years and ordered him to serve one year in jail as a condition of probation. This appeal follows.

A circuit court's decision to grant or deny a motion to withdraw a plea made before sentencing is reviewed under an erroneous exercise of discretion standard. *State v. Jenkins*, 2007

² The other offenses were operating a motor vehicle while intoxicated as a sixth offense, operating a motor vehicle while revoked, possession of a firearm as a felon, and possession of drug paraphernalia.

WI 96, ¶30, 303 Wis. 2d 157, 736 N.W.2d 24. This court will affirm a circuit court's discretionary decision if it was demonstrably based on the facts of record and in reliance on the applicable law.

Id.

Withdrawal of a plea prior to sentencing is not an absolute right. *Id.*, ¶32. The defendant has the burden to prove by a preponderance of the evidence that he or she has a fair and just reason for plea withdrawal. *Id.* The reason must be something other than a desire to have a trial or belated misgivings about the plea. *Id.*

On appeal, Drunasky contends that the circuit court erroneously exercised its discretion in denying his motion to withdraw his plea. He renews his claim that the supplemental report should have been suppressed because it was the product of an unconstitutional search of his blood for substances other than alcohol. We are not persuaded by Drunasky's argument.

Here, the search warrant at issue authorized police to secure a blood sample from Drunasky for evidence of the crimes of operating a motor vehicle while intoxicated and operating a motor vehicle with a prohibited alcohol concentration, which are prohibited by WIS. STAT. § 346.63(1). The warrant did not restrict itself to evidence of blood alcohol content. Moreover, it is possible to violate § 346.63(1) by operating a motor vehicle while under the influence of a controlled substance. Accordingly, we do not view the testing of Drunasky's blood for controlled substances as outside the scope of the search warrant.

Because we are not convinced that the supplemental report should have been suppressed, Drunasky has not shown a fair and just reason to withdraw his plea. Accordingly, we are satisfied that the circuit court properly denied his motion.

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.

Sheila T. Reiff
Clerk of Court of Appeals