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 31, 2021

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

John Blimling
Wisconsin Department of Justice
17 West Main Street
Madison, WI 53703

Michael D. Graveley
District Attorney
912 56th Street
Kenosha, WI 53140-3747

Jay R. Pucek
Assistant State Public Defender
735 N. Water Street, Ste. 912
Milwaukee, WI 53202-4105

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

2019AP2150-CR State of Wisconsin v. Valiant M. Green (L.C. #2014CF594)

Before Neubauer, C.J., Gundrum and Davis, 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).

Valiant M. Green appeals from a judgment convicting him of multiple crimes including operating a motor vehicle with a prohibited alcohol concentration (PAC) as a fourth offense with a prior in the past five years. He contends that the circuit court erred in denying 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 (2019-20).[1] We affirm.

On May 25, 2014, a concerned citizen called 911 to report that her neighbor, Green, appeared to be drunk and was driving his vehicle in the neighborhood. Police responded and discovered Green in the driver's seat of his vehicle, which was located in his driveway. Green admitted to drinking alcohol and exhibited classic signs of intoxication. He refused to perform standard field sobriety tests or provide a preliminary breath test.

Police arrested Green and applied for a search warrant to obtain a blood draw from him. The affidavit in support of the warrant noted Green's admission to drinking and detailed the indicators of intoxication. However, it failed to mention that the concerned citizen told police she had seen Green operating his vehicle in the street. Nevertheless, a judge signed the warrant, and police conducted the blood draw, which revealed Green's blood alcohol concentration to be well over the legal limit.

Green moved to suppress the results of the blood draw, arguing that the affidavit in support of the search warrant did not state probable cause because it failed to state that Green had operated his vehicle on a public highway or roadway as required for the offense. Instead, the affidavit simply stated that Green "drove or operated a motor vehicle at driveway of 3207 45th St.," which is where he resided. After a hearing on the matter, the circuit court denied the motion, and the matter proceeded to trial.

[1] All references to the Wisconsin Statutes are to the 2019-20 version.

A jury found Green guilty of multiple crimes including operating with a PAC. On that charge, the circuit court imposed a sentence of two years of initial confinement and seven months of extended supervision. This appeal follows.

On appeal, Green contends that the circuit court erred in denying his motion to suppress. Again, he complains that the affidavit in support of the search warrant did not state probable cause because it failed to state that he had operated his vehicle on a public highway or roadway as required for the offense.

A search warrant may issue only upon a finding of probable cause by a neutral and detached magistrate. ***State v. Higginbotham***, 162 Wis. 2d 978, 989, 471 N.W.2d 24 (1991). "Probable cause for a search warrant is not a technical or legalistic concept, but rather, is a 'flexible, common-sense measure of the plausibility of particular conclusions about human behavior.'" ***State v. Herrmann***, 2000 WI App 38, ¶22, 233 Wis. 2d 135, 608 N.W.2d 406 (citation omitted). Elaborate specificity is not required, and probable cause may be supported by reasonable inferences as well as facts. ***State v. Sloan***, 2007 WI App 146, ¶24, 303 Wis. 2d 438, 736 N.W.2d 189.

Our review is confined to the record that was before the magistrate, and we accord great deference to his or her determination of probable cause. ***Id.***, ¶8. We will uphold the decision to issue a warrant unless the facts in the supporting affidavit were "'clearly insufficient to support a finding of probable cause.'" ***Id.*** (citation omitted). Doubtful or marginal cases will be resolved in favor of the warrant. ***Higginbotham***, 162 Wis. 2d at 990.

Applying these standards, we conclude that the warrant to obtain a blood draw from Green was properly issued. We base our conclusion on the language in the affidavit, which

described Green as having driven or operated his vehicle "at" the driveway of 3207 45th St. Although the use of the word "at" could mean "in" or "on," it could also mean "near." *See* ***Behr v. Larson***, 275 Wis. 620, 626, 83 N.W.2d 157 (1957) (recognizing that the word "at" is often defined as "near"). If the magistrate believed that Green had driven or operated his vehicle "near" the driveway of 3207 45th St., then the magistrate could have reasonably inferred that location to include the street. Given our deferential standard of review, as well as the command to resolve doubtful or marginal cases in favor of the warrant, we affirm the circuit court's denial of Green's motion to suppress.

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