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**DISTRICT II**

May 18, 2022

To:

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

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2021AP422-CR

State of Wisconsin v. Katie L. Cook (L.C. #2019CF635)

Before Gundrum, P.J., Grogan and Kornblum, 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).**

Katie L. Cook appeals from a judgment convicting her of operating a motor vehicle with a prohibited alcohol concentration (PAC) as a sixth offense. She contends that the circuit court erred in denying her motion to suppress her post-arrest blood test result. 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).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In the early morning hours of November 17, 2019, Police Officer Scott Sopata stopped Cook's vehicle for "veer[ing] over the center line." Upon making contact with Cook, Sopata noticed that her eyes were bloodshot, and he smelled the odor of intoxicants on her breath. Cook admitted to consuming multiple alcoholic beverages.

Based upon his observations, and knowing that Cook was subject to a reduced .02 alcohol restriction due to prior drunk driving convictions, Sopata asked Cook to perform three field sobriety tests. Cook agreed and proceeded to fail two of them.

Upon completion of the field sobriety tests, Sopata decided that he would arrest Cook regardless of the result of the preliminary breath test (PBT). Nevertheless, he still administered the PBT, which registered a result of .09. Sopata later acknowledged that he did not request Cook to take the PBT as required by WIS. STAT. § 343.303; rather, he simply told her to blow into the device.

Sopata subsequently placed Cook under arrest. Cook was then transported to the hospital where a blood draw occurred. Analysis of her blood yielded a result above the reduced .02 alcohol restriction.

Cook moved to suppress the PBT and blood test results. The circuit court agreed to suppress the former but not the latter. In doing so, it noted that Sopata had probable cause to arrest Cook and made that determination before the PBT.

Cook eventually pled no contest to operating a motor vehicle with a PAC as a sixth offense. The circuit court withheld sentence and placed her on probation for three years with various conditions of supervision and statutory penalties. This appeal follows.

On appeal, Cook contends that the circuit court erred in denying her motion to suppress her post-arrest blood test result. She describes the test result, which followed the unlawful PBT, as “fruit of the poisonous tree.”

When reviewing a circuit court’s decision on a motion to suppress, we uphold the court’s findings of fact unless clearly erroneous. *State v. Pender*, 2008 WI App 47, ¶8, 308 Wis. 2d 428, 748 N.W.2d 471. Whether those facts require suppression is a question of law that we review independently. *Id.*

Here, the facts established probable cause to arrest Cook without the PBT result. *See County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999) (discussing the use of observations and field sobriety tests to establish probable cause prior to a PBT). This was due to Cook’s admitted drinking, her erratic driving, her reduced .02 alcohol restriction, and other signs of intoxication and impairment (i.e., the odor of intoxicants and failed field sobriety tests). Because it was apparent that Cook was impaired by alcohol and not some other intoxicant, and because Cook’s blood would have been tested for the presence of alcohol regardless of whether the PBT was administered,<sup>2</sup> the errant PBT demand ultimately affected nothing. Accordingly, we conclude, as did the circuit court, that the post-arrest blood test result was not inadmissible as “fruit of the poisonous tree.”

Upon the foregoing reasons,

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<sup>2</sup> By Cook’s own admission, the testing options from which her arresting officer was forced to select each anticipated alcohol testing.

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*