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DISTRICT II

August 28, 2024

To:

Hon. Daniel S. Johnson
Circuit Court Judge
Electronic Notice

John D. Flynn
Electronic Notice

Michele Jacobs
Clerk of Circuit Court
Walworth County Courthouse
Electronic Notice

Annice Kelly
Electronic Notice

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

2022AP2056-CR

State of Wisconsin v. Jeremy C. Denton (L.C. #2021CF73)

Before Neubauer, Grogan and Lazar, 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).

Jeremy C. Denton appeals from a judgment convicting him of operating a motor vehicle while under the influence (OWI) as a fifth offense. He contends that there was insufficient evidence to support his conviction. 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 (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

On February 10, 2021, at around 8:00 p.m., Sheriff's Deputy Gerardo Baca went to a gas station in the City of Elkhorn. Pulling into the parking lot, he observed a vehicle parked between two spaces. The engine of the vehicle was running, and the driver was slumped over with his head down.

Deputy Baca decided to perform a welfare check on the driver. He knocked on the driver's window several times, and eventually the driver—Denton—woke up. Denton seemed confused and had trouble rolling down the window. When Denton stepped out of the vehicle, Deputy Baca noticed that he had bloodshot eyes and appeared drowsy. Denton complained that he was cold, so Deputy Baca asked him to sit in the back of his squad car.

In the squad car, Deputy Baca detected an odor of intoxicants coming from Denton. He asked Denton how much he had to drink, and Denton replied that he had "some beers and a shot" about two hours prior. Deputy Baca also asked Denton which way he had taken to get to the gas station. Denton denied driving on the road but admitted that "he had driven around the parking lot" of the gas station. Denton estimated that he had been at the gas station parking lot for "less than an hour."

After conducting field sobriety tests that showed signs of impairment, Deputy Baca placed Denton under arrest. A subsequent blood draw revealed a blood alcohol concentration (BAC) of 0.111.

The State charged Denton with OWI as a fifth offense, and the matter proceeded to trial. There, the State called Deputy Baca and a toxicologist as witnesses. Denton, meanwhile,

testified on his own behalf and also called a tow truck driver who confirmed that Denton's vehicle had a flat tire.²

Ultimately, the jury found Denton guilty. The circuit court sentenced him to two years of initial confinement and three years of extended supervision. This appeal follows.

On appeal, Denton contends that there was insufficient evidence to support his conviction. He claims that the State failed to prove that he drove his motor vehicle while under the influence of an intoxicant. *See* WIS JI—CRIMINAL 2663; WIS. STAT. § 346.63(1)(a).

In reviewing the sufficiency of the evidence to support a conviction, we may not substitute our judgment for that of the trier of fact unless the evidence, viewed most favorably to the State and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Therefore, if more than one reasonable inference can be drawn from the evidence, we must adopt the inference that supports the verdict. *Id.* at 506-07.

Here, we are satisfied that there was sufficient evidence to support Denton's conviction. At trial, the State introduced evidence that (1) Denton admitted to drinking alcohol about two hours before his encounter with Deputy Baca; (2) Denton admitted to driving around the gas

² At trial, Denton insisted that he only drank after he realized he had a flat tire and did not drive after drinking. Denton did not mention the flat tire in his conversation with Deputy Baca. As the arbiter of credibility, the jury was entitled to reject Denton's testimony. *O'Connell v. Schrader*, 145 Wis. 2d 554, 557, 427 N.W.2d 152 (Ct. App. 1988).

station parking lot;³ and (3) Denton admitted to being at the gas station parking lot for “less than an hour.” From this, the jury could reasonably infer that Denton drank alcohol before he drove around the gas station parking lot. It could also infer—based upon Denton’s high BAC and the toxicologist’s testimony about the rate of alcohol absorption—that he was under the influence of an intoxicant when doing so.

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.

Samuel A. Christensen
Clerk of Court of Appeals

³ The fact that Denton only admitted to driving in the gas station parking lot is of no import. The law against OWI applies to “all premises held out to the public for use of their motor vehicles.” WIS. STAT. § 346.61. This includes a parking lot of a business. *See City of La Crosse v. Richling*, 178 Wis. 2d 856, 505 N.W.2d 448 (Ct. App. 1993).