COURT OF APPEALS
DECISION
DATED AND FILED

April 1, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1589-CR **Cir. Ct. No. 2012CT326**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ZOLTAN M. PETER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed*.

¶1 REILLY, J.[1] Zoltan M. Peter appeals his conviction for operating a motor vehicle with a detectable amount of a restricted controlled substance in his

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

blood. Peter argues the trial court erred when it denied his motion to suppress because the evidence was not lawfully obtained. We affirm Peter's conviction.

Facts

¶2 On September 29, 2011, Officer Aaron Hackett responded to a single-car accident involving a driver who struck a tree. As emergency personnel attended to Peter (the driver), Hackett observed a twelve-pack of beer on the rear floor of Peter's vehicle. Hackett entered the vehicle, picked up the twelve-pack, and noticed the beer was unopened. As Hackett was replacing the beer, he noticed plastic bags sticking out of the compartment behind the passenger seat. Hackett opened the compartment, used his flashlight to look inside, and discovered the bags contained a substance that resembled marijuana.

¶3 Hackett went to the hospital, and when Peter appeared coherent, Hackett read the "Informing the Accused" form, and Peter consented to a blood draw. Peter was not told that he was under arrest at the time of the blood draw. Peter's blood was drawn and an analysis of the blood found it contained a detectable amount of a controlled substance: Delta-9-THC.

¶4 Peter was charged with operating a motor vehicle while under the influence of an intoxicant and operating a motor vehicle with a detectable amount of a restricted controlled substance in his blood, as a second offense. Peter moved to suppress evidence seized from his vehicle and evidence of his blood test.

¶5 At the suppression hearing, Peter argued the suspected marijuana was not in plain view because the bag was in a compartment and Hackett utilized a flashlight to illuminate the bag. He also argued that he did not voluntarily consent to the blood test based on his physical and emotional condition, as well as the

short time between his accident and the blood draw. The court denied Peter's motion, finding that the marijuana was in plain view and that his mental state was such that he had voluntarily consented to the blood test. Although raised in his motion, at the hearing Peter did not argue, and the court did not rule on, whether there was probable cause or exigent circumstances for the warrantless blood draw, *see* ***State v. Tullberg***, 2014 WI 134, ¶55, 359 Wis. 2d 421, 857 N.W.2d 120, or whether the requirements of WIS. STAT. § 343.305(3)(ar)1. had been met.

¶6 Following a jury trial, Peter was found not guilty of operating a motor vehicle while under the influence of an intoxicant, but he was found guilty of operating a motor vehicle with a detectable amount of a restricted controlled substance. Peter appeals.

Discussion

¶7 We review an order on a motion to suppress by employing a two-part inquiry in which we uphold a trial court's findings of fact unless clearly erroneous but independently apply constitutional principles to those facts. ***Tullberg***, 359 Wis. 2d 421, ¶27. Peter is not automatically entitled to a new trial if prejudicial evidence is wrongfully admitted. *See* ***State v. Harris***, 2008 WI 15, ¶¶41-42, 307 Wis. 2d 555, 745 N.W.2d 397. We will order a new trial only if the error was not harmless. *See* ***id.*** An error is harmless if it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." ***Neder v. United States***, 527 U.S. 1, 18 (1999).

¶8 The elements the State needed to prove in this case were (1) Peter operated a motor vehicle on a highway and (2) Peter had a detectable amount of Delta-9-THC in his blood at the time that he drove the motor vehicle. *See* WIS JI—CRIMINAL 2664B. The State presented the jury with ample evidence to

conclude Peter was operating a motor vehicle with a detectable amount of a restricted controlled substance in his blood. *See* ***State v. Rocha-Mayo***, 2014 WI 57, ¶¶34-37, 355 Wis. 2d 85, 848 N.W.2d 832. The jury heard Hackett's testimony regarding the process he used to obtain Peter's blood sample, including the circumstances surrounding Peter's consent and how the sample was delivered to the lab. Additionally, the jury was told that Peter's blood test results showed he had a detectable amount of Delta-9-THC in his blood. In accordance with WIS JI—CRIMINAL 2664B, the court instructed the jury that a chemical analysis showing a detectable amount of a restricted controlled substance in Peter's blood sample is evidence it was present in Peter's blood at the time he drove or operated his vehicle. Additionally, the court instructed the jury that if it was satisfied beyond a reasonable doubt that there was a detectable amount of a restricted controlled substance in Peter's blood at the time the sample was taken, the jury could find from that fact alone that Peter was guilty of the offense. *See* ***id.*** Peter does not contend that these instructions were in error.

¶9 Peter's argument that the marijuana evidence should have been suppressed due to a violation of the plain view doctrine is not material to the charged crime. Peter was not charged nor tried in this case with possession of marijuana, and Peter does not develop an argument that the suppression of the marijuana evidence found in his vehicle would have led to suppression of the blood test results as he has not drawn any link between the vehicle search and his blood draw. Peter abandoned his arguments before the trial court that the warrantless blood draw was not based on probable cause and exigent circumstances or that the requirements of WIS. STAT. § 343.305(3)(ar)1. had not been met. *See* ***State v. Johnson***, 184 Wis. 2d 324, 344-45, 516 N.W.2d 463 (Ct.

App. 1994). We will not develop such arguments for him. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶10 Given the blood test evidence that Peter had 1.3 nanograms per milliliter of Delta-9-THC in his blood shortly after driving his car, suppression of the marijuana evidence would not have affected the jury's verdict on whether Peter operated his vehicle with a detectable amount of a restricted controlled substance in his blood. Therefore, any error alleged by Peter was harmless beyond a reasonable doubt.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.