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DISTRICT IV

February 20, 2025

To:

Hon. Paul S. Curran
Circuit Court Judge
Electronic Notice

Alecia Kast
Clerk of Circuit Court
Juneau County Justice Center
Electronic Notice

Joshua Michael Andreasen
Electronic Notice

Walter Arthur Piel, Jr.
Electronic Notice

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

2024AP1852 Juneau County v. Perion Dupree Little (L.C. # 2021TR2043)

Before Kloppenburg, P.J.[1]

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).

Perion Dupree Little appeals a judgment of conviction for operating a motor vehicle with a detectable amount of a restricted controlled substance in his blood, as a first offense. Little argues that the circuit court erred in admitting, over his objection, the results of the analysis of his blood because Juneau County failed to establish that his blood was drawn by a person permitted to do so under WIS. STAT. § 343.305(5)(b). Little further argues that without the test result, the evidence would be insufficient to sustain the conviction and, therefore, the judgment

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

of conviction should be vacated and the charge dismissed. Based on my review of the briefs and record, I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. I summarily reverse.[2]

The State charged Little with operating a motor vehicle with a detectable amount of a restricted controlled substance in his blood, as a first offense. The case proceeded to a trial before the circuit court, at which the arresting officer and a forensic scientist with the State Laboratory of Hygiene testified, in pertinent part, as follows. After events that are not in dispute on appeal, the officer arrested Little for operating while intoxicated and transported him to the Juneau County Jail. The officer read the Informing the Accused form to Little, and Little consented to providing a blood sample. As the officer testified, "Mauston EMS came to the jail. They drew samples of [Little's] blood." The forensic scientist analyzed Little's blood sample and recorded the results of her analysis in a report that the County offered as an exhibit. The report indicates that Little's blood sample was collected by "Damian Kruse."

The County moved the circuit court to admit the report into evidence. Little objected based on the County's failure to establish "who drew [the blood sample]" or "what that person was." The court overruled the objection, noting that the report provided the name of the person who drew the blood sample. In his closing argument to the court, Little reiterated his argument

[2] The parties' briefs do not comply with WIS. STAT. RULE 809.19(8)(bm), which addresses the pagination of appellate briefs. *See* RULE 809.19(8)(bm) (providing that, when paginating briefs, parties should use "Arabic numerals with sequential numbering starting at '1' on the cover"). This rule has recently been amended, *see* S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021), and the reason for the amendment is that briefs are now electronically filed in PDF format, and are electronically stamped with page numbers when they are accepted for efiling. As our supreme court explained when it amended the rule, the new pagination requirements ensure that the numbers on each page of a brief "will match ... the page header applied by the efiling system, avoiding the confusion of having two different page numbers" on every page of a brief. S. CT. ORDER 20-07 cmt. at xl.

that the County failed to meet its burden of proving that the person who drew Little's blood is one of the persons qualified to do so under WIS. STAT. § 343.305(5)(b). The court found that the County had met its burden, found Little guilty of operating with a detectable amount of a restricted controlled substance in his blood, and dismissed a separate charge of operating while intoxicated.

WISCONSIN STAT. § 343.305(5)(b) provides that "[b]lood may be withdrawn from the person arrested … to determine the presence or quantity of … a controlled substance … only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or person acting under the direction of a physician."

As stated, Little argues that the circuit court erred in admitting the results of the analysis of his blood because the County did not establish that his blood was drawn by a person permitted to do so under WIS. STAT. § 343.305(5)(b). Little notes that the County, in response to Little's objection, did not provide any additional information regarding the person who performed the blood draw; therefore, Little argues, the County failed to lay the required foundation for admission of the report under § 343.305(5)(b).

In response, the County effectively concedes that the circuit court erroneously admitted the report. Without citing to the record, the County asserts that the arresting officer "directed an EMS worker to make the draw" and that the EMS worker's name is shown on the report. However, the County does not explain how these facts, even if supported by the record, establish that the purported EMS worker is a person permitted to perform the blood draw under WIS. STAT. § 343.305(5)(b). I reject the County's apparent position that the court properly admitted

the report based on the County's failure to support that position with either citations to the record or a developed argument. *See* ***State v. McMorris***, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 (court of appeals "may choose not to consider arguments unsupported by references to legal authority, arguments that do not reflect any legal reasoning, and arguments that lack proper citations to the record").

As also stated above, Little further argues that without the test result, the evidence would be insufficient to sustain the conviction and, therefore, the judgment of conviction should be vacated and the charge dismissed. The County responds that, even if the report was erroneously admitted, the proper remedy "would be a reversal with a remand back to the circuit court for a new trial." However, the County does not support this assertion with legal authority, and I reject this apparent argument on that basis. *See* ***id.***

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily reversed 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