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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

January 22, 2025

To:

Hon. Anthony C. Nehls
Circuit Court Judge
Electronic Notice

John W. Kellis
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Walter Arthur Piel Jr.
Electronic Notice

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

2023AP884-CR

State of Wisconsin v. Gary R. Mapes (L.C. #2021CF778)

Before Gundrum, P.J., 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).

Gary R. Mapes 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 September 26, 2021, a woman with the initials M.P. went to a bar to listen to some music. While sitting outside, she observed a man leave the bar and get behind the wheel of a “sporty vehicle.” Once the engine started, the man lost control of the vehicle, and it “went sliding down the road with the back end continuously swerving.” A “dumbfounded” M.P. watched as the vehicle struck her parked car and a mailbox post before coming to a stop.

M.P. immediately ran over to survey the damage. The man who struck her car, later identified as Mapes, approached and asked M.P. to drive to another location where he and another person “would fix [her car] instantly.” M.P. declined this offer and instead called the police to report the crash. Mapes initially stayed nearby, but eventually left to go to a neighboring house.

Deputy Matthew Breister was dispatched to the scene. He first met with M.P. who recounted what she had witnessed. He then met with Mapes, who had returned from the neighboring house. According to Deputy Breister, Mapes “appeared uneasy on his feet and had difficulty walking in a straight line.” In addition, Mapes’ “eyes were glossy and bloodshot and his speech was slurred and slow.”

When asked what had happened, Mapes claimed that “his foot got stuck under the gas pedal,” causing him to lose control of the vehicle. When asked about his alcohol consumption that day, Mapes acknowledged having two beers before the crash. However, he said that he had consumed additional alcohol at the neighboring house after the crash.²

² Deputy Breister later spoke to two people at the neighboring house, and they confirmed that Mapes had been drinking there.

Deputy Breister proceeded to administer multiple field sobriety tests. After Mapes performed poorly on them, Deputy Breister placed Mapes under arrest. A subsequent blood draw revealed a blood alcohol concentration of 0.123.

The State filed a complaint against Mapes, and the matter proceeded to trial. There, both M.P. and Deputy Breister testified. Ultimately, the jury found Mapes guilty of OWI as a fifth offense.³ The circuit court sentenced him to one and a half years of initial confinement and one year of extended supervision. This appeal follows.

On appeal, Mapes contends that there was insufficient evidence to support his conviction. Specifically, he claims that the State failed to prove that he was under the influence of an intoxicant at the time he operated his motor vehicle. *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 Mapes' conviction. As noted, the jury heard evidence that Mapes left a bar, got behind the wheel of a vehicle,

³ The jury found Mapes not guilty of operating a motor vehicle with a prohibited alcohol concentration.

immediately lost control of the vehicle, crashed into M.P.'s parked car and a mailbox post, exhibited indicia of impairment soon thereafter, and had an unlawful blood alcohol concentration following his arrest. From this, the jury could reasonably infer that Mapes was under the influence of an intoxicant at the time he operated his motor vehicle notwithstanding evidence that he consumed additional alcohol after the crash. The jury could also have viewed Mapes' stated excuse for the crash (i.e., his foot getting stuck under the gas pedal) as a byproduct of his intoxication.

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