

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 22, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0757-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

STEVEN L. STOFLET,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
JACK AULIK, Judge. *Affirmed.*

ROGGENSACK, J.¹ Defendant-Appellant, Steven L. Stoflet (Stoflet), appeals the denial of a motion to suppress all evidence derived directly or indirectly as a consequence of his detention and arrest on July 12, 1995. In support of his motion, he argues that he was unlawfully detained for the purpose of investigating a possible charge of operating a motor vehicle while under the influence of an intoxicant because his detention exceeded the original

¹ This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

scope of the stop. He argues the field sobriety test failed to support probable cause to believe that a preliminary breath screening test should have been administered; therefore, the results of that test should have been suppressed as well. And, he asserts his arrest was not based on probable cause. Finally, Stoflet alleges error because the trial court did not give him an evidentiary hearing on his motion to suppress.

For the reasons stated below, the trial court's decision is affirmed.

DISCUSSION

The gravamen of Stoflet's appeal is that he was convicted because the trial court erred when it did not hold an evidentiary hearing on his motion to suppress evidence of his violation of § 346.63(1)(a), STATS., and denied this motion based on the motion papers and the complaint. Further, Stoflet's suppression motion alleges an unlawful detention, an unlawful administration of a preliminary breath screening test and an arrest without probable cause.

Scope of Review.

The application of a statute to a particular set of facts is a question of law which is decided independently, without deference to the trial court. *Minuteman, Inc. v. Alexander*, 147 Wis.2d 842, 853, 434 N.W.2d 773 (1987). And, whether the facts found meet a particular legal standard is a question of law. *Green Scapular Crusade v. Town of Palmyra*, 118 Wis.2d 135, 138, 345 N.W.2d 523, 525 (Ct. App. 1984).

Evidentiary Hearing.

Here, § 971.30(2)(c), STATS., states the grounds for a motion must be stated with particularity. A hearing is not required on a motion to suppress unless the movant, by affidavit or other facts, points out to the court where there are material facts in dispute. See *U.S. v. Harris*, 914 F.2d 927, 933 (7th Cir. 1990). Where the Wisconsin statute being construed is similar to a federal

statute, the courts of Wisconsin may look to federal law for guidance. *Midwest Developers v. Goma Corp. et. al.*, 121 Wis.2d 632, 651, 360 N.W.2d 554, 564 (Ct. App. 1984).

Stoflet argues that he should have been provided an evidentiary hearing on the merits of his motion to suppress. However, he failed to advise the trial court of any disputed material factual issue which it needed to resolve in order to rule on the suppression motion. His motion papers incorporated only the arresting officer's report as a factual basis for the motion. He included no affidavit asserting facts in conflict with the officer's report, nor did he bring conflicting material facts to the trial court's attention in any other way. The purpose of an evidentiary hearing is to resolve disputed issues of material fact. *Midwest Developers v. Goma Corp.*, 121 Wis.2d at 651. Based on this record, there were no disputed issues of material fact and no hearing was required.

Denial of Motion to Suppress.

Stoflet argues that the trial court ignored arresting Officer Fenton's report and implies that had the report been considered, the trial court would have granted the suppression motion. Stoflet does not explain this argument by pointing to parts of the report which support his contention. Rather, he seems to imply that because speeding was one of the facts which led to his arrest, and because he was able to place heel to toe for nine counts in one part of the sobriety test, he should not have been given a preliminary breath screening test or arrested for a violation of § 346.63(1)(a), STATS.

Stoflet's arguments are not well taken. First, he was not stopped solely for speeding. The police report states, "I then observed the vehicle weaving, in a serpentine pattern, in the traffic lane, as well as crossing the striped white line three times (to the left hand side of the road), and also crossing over the solid white line on the right hand side of the road three times." Speeding was only one of the concerns of Officer Fenton when he stopped Stoflet.

Second, probable cause to believe that a violation of § 346.63(1), STATS., or a local ordinance in conformity therewith, has occurred is not the sole

authorization for a preliminary breath screening test. Section 343.303, STATS. authorizes a preliminary breath screening test "if the officer detects any presence of alcohol." The police report shows undisputed material facts from which the trial court could easily have found that the arresting officer had reasonable suspicion to believe that Stoflet was under the influence of an intoxicant when the initial stop was made. For instance, Stoflet smelled strongly of alcohol, had a glassy eyed appearance, exhibited slow speech and reported he had had four or five drinks. The preliminary breath screening test was properly administered.

Third, the trial court could not consider a portion of the police report without considering it in its entirety. *State v. Sharp*, 180 Wis.2d 640, 653, 511 N.W.2d 316, 322-23 (Ct. App. 1993). The entire report of Officer Fenton's initial contact with Stoflet provided additional facts to support probable cause for his arrest. When Stoflet exited the car, he hung onto the vehicle's door; he was weaving while walking toward the squad car from his own car; and he failed the field sobriety test. Officer Fenton's initial observations of Stoflet, combined with his observations after the stop, confirm probable cause to arrest for a violation of § 346.63(1)(a), STATS. The motion to suppress was properly denied.

By the Court. – Judgment affirmed.

Not recommended for publication in the official reports. See RULE 809.23(1)(b)4., STATS.