COURT OF APPEALS
DECISION
DATED AND RELEASED

July 1, 1997

NOTICE

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.

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

No. 96-3458-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

STEVEN CURTES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: RONALD S. GOLDBERGER, Judge. *Affirmed.*

WEDEMEYER, P.J.[1] Steven Curtes appeals from a judgment entered after he pled guilty to driving under the influence of an intoxicant, contrary to §§ 346.63(1)(a) and 346.65(2), STATS. He claims that the trial court erred in denying his motion to suppress the results of an intoxilyzer test because

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

the arresting officer did not have probable cause to arrest him. Because the trial court's findings were not clearly erroneous and because the arresting officer had probable cause to arrest, the trial court did not err in denying Curtes's suppression motion. Therefore, this court affirms.

I. BACKGROUND

On March 14, 1996, at approximately 1 a.m., officers from the Milwaukee Police Department were investigating a hit-and-run accident which occurred at 1964 North Prospect Avenue. A witness provided a description of the vehicle involved in the accident, which was then broadcast over police radio. At 1:46 a.m., approximately ten minutes after the radio dispatch, Officer Steven Strasser and his partner pulled over a vehicle matching the description of the hit-and-run vehicle. Curtes was driving the suspect vehicle.

Officer William Walsh, who was investigating the accident, then arrived at the scene and Strasser and his partner left. While interviewing Curtes, Walsh observed that Curtes slurred his speech, had bloodshot eyes and a slight odor of alcohol on his breath. Walsh asked Curtes to perform field sobriety tests, but Curtes refused. Walsh then had Curtes step out of his vehicle and walk to the squad car. Walsh followed Curtes and noticed that he walked a "little bit unstable." Curtes was then arrested for operating a vehicle while under the influence of an intoxicant. An intoxilyzer test taken at the police station revealed that Curtes's blood alcohol level was .15.

Curtes moved to suppress the results of the intoxilyzer test, claiming that Walsh did not have probable cause to arrest because no field sobriety tests had been conducted and because Walsh did not observe Curtes driving in an erratic manner. The trial court concluded that Walsh's observations were sufficient to

support a finding of probable cause and denied the motion to suppress. Curtes plead guilty to operating a vehicle under the influence of an intoxicant. Judgment was entered. Curtes now appeals.

II. DISCUSSION

Curtes argues that the trial court should have granted his motion to suppress because Walsh did not have probable cause to arrest him. The trial court denied the motion, ruling that under the totality of the circumstances, Walsh had probable cause to arrest Curtes. This court affirms.

A motion to suppress evidence raises a constitutional question, which presents a mixed question of fact and law. To the extent the trial court's decision involves findings of evidentiary or historical facts, those findings will not be overturned unless they are clearly erroneous. *See* ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The application of constitutional and statutory principles to the facts found by the trial court, however, presents a matter for independent appellate review. *See* ***id.***

For an arrest to be valid, the Fourth Amendment of the United States Constitution and art. I, § 11 of the Wisconsin Constitution require that the arrest be supported by probable cause. *See* ***State v. Riddle***, 192 Wis.2d 470, 475-76, 408 N.W.2d 408, 410 (Ct. App. 1995). Probable cause refers to "that quantum of evidence which would lead a reasonable police officer to believe that the defendant probably committed a crime." ***State v. Koch***, 175 Wis.2d 684, 701, 499 N.W.2d 152, 161, *cert. denied*, 510 U.S. 880 (1993) (quoting ***State v. Paszek***, 50 Wis.2d 619, 624-25, 184 N.W.2d 836, 839 (1971)). To determine if an arrest was supported by probable cause, the court does not examine the arresting officer's subjective beliefs, but rather applies an objective standard which looks at

the totality of the circumstances to determine whether there was sufficient evidence for a reasonable police officer to believe that the defendant had committed a crime. *See* ***Riddle***, 192 Wis.2d at 476, 531 N.W.2d at 410.

In the instant case, the trial court found the following facts. Walsh was called to the site where Curtes was pulled over because Curtes's vehicle matched the description of the vehicle involved in a hit-and-run accident. While Walsh does not expressly recall asking Curtes to take field sobriety tests, he was quite clear in remembering that Curtes refused to take any field sobriety tests. Curtes's refusal to take field sobriety tests was what Walsh was referring to when he described Curtes as "uncooperative." When Walsh asked Curtes to walk to the squad car, he observed Curtes walk unsteadily. These findings are not clearly erroneous. Each finding is supported by Walsh's testimony at the suppression hearing. Further, the officer's testimony indicates that as he was talking to Curtes, Walsh noticed that there was an odor of alcohol on Curtes's breath and that his eyes were bloodshot and his speech was slurred.[2]

Based on these facts, the trial court concluded that Walsh had probable cause to arrest Curtes. This court agrees. A police officer is not required to first perform a field sobriety test before arresting a suspect for driving while under the influence of an intoxicant. *See* ***State v. Willie***, 185 Wis.2d 673, 684, 518 N.W.2d 325, 329 (Ct. App. 1994). On the contrary, a defendant's refusal to submit to a field sobriety test may be used as evidence of intoxication for establishing probable cause. *See* ***State v. Babbitt***, 188 Wis.2d 349, 358, 525 N.W.2d 102, 105 (Ct. App. 1994). In addition, Curtes displayed other

[2] Although the trial court did not make a specific finding in this regard, this court may review the record to find additional facts to support the trial court's decision.

indications of being under the influence. He had bloodshot eyes, slurred speech and smelled of alcohol. Under the totality of the circumstances, this court concludes that Walsh had probable cause to justify arresting Curtes. Therefore, the trial court did not err in denying Curtes's motion to suppress.

By the Court.—Judgment affirmed.

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