COURT OF APPEALS
DECISION
DATED AND FILED

April 26, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 01-0020-FT

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

COLUMBIA COUNTY,

PLAINTIFF-RESPONDENT,

V.

TYLER C. SCHLEICHER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County: DANIEL GEORGE, Judge. *Affirmed.*

¶1 DYKMAN, P.J.[1] Tyler C. Schleicher appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OMVWI), first offense. He asserts that the police officer who arrested him continued questioning

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000), and expedited under WIS. STAT. RULE 809.17 (1999-2000).

him after he asked for counsel, and that statements he made should therefore be suppressed. He also asserts that the officer did not have probable cause to arrest him, thus also requiring that the statements and other evidence be suppressed. Additionally, he contends that the trial court erred by permitting the results of a preliminary breath test to "come in." We conclude that because Schleicher pleaded no contest to the charge of OMVWI, he has waived his defenses to the charge of OMVWI, and we therefore affirm.

¶2 A Columbia County deputy sheriff arrested Schleicher for OMVWI at the Columbus hospital. The deputy had investigated the scene of a one-car roll-over which had occurred between 4:00 a.m. and 5:15 a.m. on December 5, 1999. The deputy was told that the driver, Schleicher, had been taken to the hospital. At the hospital, the deputy noticed that Schleicher's eyes were "really red and glassy" and detected a very strong odor of intoxicants on Schleicher's breath. Schleicher's mother also noted a "pretty strong" odor of intoxicants on him. Schleicher walked with a slight stagger. The deputy asked Schleicher to recite the alphabet, and Schleicher did so, slurring his "alphas," and missing the letter "V." He was sometimes hard to understand, and his speech was severely slurred. Schleicher failed the one-to-four/four-to-one finger test, and registered 0.21 on a preliminary breath test. Both Schleicher and his mother told the officer that they wanted an attorney for Schleicher.

¶3 The deputy sheriff issued Schleicher three citations: one for OMVWI; one for operating a motor vehicle with a prohibited blood alcohol concentration (BAC); and one for operating a motor vehicle while operator's permit suspended (OAS). Schleicher filed pre-trial motions to dismiss and to suppress. The next document of record is a stipulation, filed December 19, 2000, in which Schleicher and the State agreed that Schleicher would plead no contest to

the charge of OMVWI, and the trial court would dismiss the charges of BAC and OAS. The trial court apparently followed the stipulation, because the record shows a default judgment dated December 22, 2000, convicting Schleicher of only OMVWI (First Offense).

¶4 Schleicher first argues that we should exercise our discretion and decline to invoke the guilty-plea-waiver rule, a doctrine holding that the entry of a guilty or no-contest plea waives all nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *See* ***County of Racine v. Smith***, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984). Schleicher notes that we did not follow this rule in ***County of Ozaukee v. Quelle***, 198 Wis. 2d 269, 542 N.W.2d 196 (Ct. App. 1995). But one of the reasons we chose to address the waived issue in ***Quelle*** was that there were no published cases on that issue. *See* ***id.*** at 276. Schleicher asserts: "The defendant has been unable to locate any published case in the State of Wisconsin that specifically addresses what the Court should do in a situation where the defendant clearly asserts his request for counsel in what, ultimately, turns out to be a civil action." That may well be true, but only because Schleicher did not look, or because he looked in such a cursory way that it was predictable that nothing would be found. He is therefore much like the defendant in ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980). In ***Shaffer***, we explained that argument with no legal authority specifically supporting the relevant propositions was inadequate, and that "[i]n the future this court [would] refuse to consider such an argument." ***Id.*** at 546.

¶5 In the years since ***Shaffer***, we have applied this rule many times, and see no need to depart from it now. The State has not explained its position on the effect of Schleicher's request for counsel, other than asserting that Schleicher was not entitled to ***Miranda*** warnings, an issue Schleicher concedes. Schleicher has

not discussed the relevance of ***Lassiter v. Department of Social Servs.***, 452 U.S. 18 (1981), ***State ex rel. Winnie v. Harris***, 75 Wis. 2d 547, 249 N.W.2d 791 (1977), ***State v. Novak***, 107 Wis. 2d 31, 318 N.W.2d 364 (1982), ***Piper v. Popp***, 167 Wis. 2d 633, 482 N.W.2d 353 (1992), and ***State v. Pultz***, 206 Wis. 2d 112, 556 N.W.2d 708 (1996), cases relevant to the issue Schleicher raises. Nor does Schleicher tell us what specific inculpatory statements or specific information he wishes suppressed. He does not refer to the specific part of the record that shows when, during his interrogation, he asked for an attorney. With little assistance from the parties on the issue Schleicher raises, we conclude that there is no reason to depart from the guilty-plea-waiver rule and decide whether Schleicher was entitled to suppression of something once he asked for counsel. We do not consider that issue further.

¶6 Next, Schleicher asserts that the deputy did not have probable cause to arrest him. But again, he cites no authority showing what evidence is necessary to provide probable cause to arrest in OMVWI cases. There is no lack of such authority. *See*, *e.g.*, ***State v. Seibel***, 163 Wis. 2d 164, 471 N.W.2d 226 (1991); ***State v. Swanson***, 164 Wis. 2d 437, 475 N.W.2d 148 (1991); ***State v. Wille***, 185 Wis. 2d 673, 518 N.W.2d 325 (Ct. App. 1994). We decline to exercise our discretion to address this issue. Schleicher's no-contest plea has waived it.

¶7 Last, Schleicher asserts that the trial court erred by allowing the results of his preliminary breath test to "come in." But he has not shown where the trial court considered this evidence, and our review of the record shows only that the trial court planned on deciding Schleicher's pre-trial motions on October 23, 2000. There is no transcript of the October 23 hearing, if it occurred. There is no indication of whether the trial court ruled on Schleicher's motions, or whether its ruling, if it made one, relied on the preliminary breath test. It is

Schleicher's burden to supply a record sufficient for appellate court review. *See* ***Seltrecht v. Bremer***, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997). He has failed to do so. We see no reason to relieve Schleicher of his waiver of this issue resulting from his no-contest plea to the charge of OMVWI.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4 (1999-2000).