

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 16, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2008AP2563-CR

Cir. Ct. No. 2007CT3274

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DOUGLAS R. WEALTI,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Affirmed.*

¶1 BRIDGE, J.¹ Douglas Wealti appeals from a judgment of conviction for operating a motor vehicle while under the influence of alcohol, second offense, contrary to WIS. STAT. § 346.63(1)(a). He contends the criminal

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

complaint did not establish probable cause to believe that he operated a motor vehicle while under the influence of alcohol. He also contends that his arrest is not supported by probable cause. We disagree and therefore affirm.

BACKGROUND

¶2 On August 18, 2007, at approximately 11:50 p.m., David Freeman, a deputy sheriff with the Dane County Sheriff's Department, arrived at the residence of Jim Schoeberl, in the township of Dunn, to perform an EMS assist. Upon his arrival, Freeman observed that a single individual, later identified as Wealti, was sitting in a vehicle which was parked on Schoeberl's driveway. The vehicle was not running at the time.

¶3 Upon approaching Wealti, Freeman observed that Wealti's eyes appeared red, he smelled of intoxicants, his speech was slurred, and there was vomit, which appeared to be fresh, covering Wealti and the inside of the vehicle. Freeman also observed that keys to the vehicle were on the front passenger seat. Freeman testified that Wealti admitted upon questioning to having consumed about eight beers that evening and that Wealti did not know where he was. Freeman further testified that when he asked Wealti where he was going, Wealti stated that he was "driving from Madison to Stoughton." Freeman testified that the only way to get from Madison to Schoeberl's residence was to drive on a highway or other road open to the use of the public.

¶4 Freeman transported Wealti to the McFarland Police Department where field sobriety tests were administered. Freeman testified that the tests were indicative of intoxication. Wealti was also administered a preliminary breath test, which indicated that Wealti's level of intoxication was above the legal limit. Wealti was then arrested and a criminal complaint was filed.

¶15 The criminal complaint alleged in pertinent part,

Deputy Freeman reports that upon his arrival he observed EMS personnel were assisting a white male who was later identified by means of a Wisconsin photo driver's license as Douglas R. Wealti, the defendant herein. Deputy Freeman reports he observed the defendant was still seated in the driver's seat of the suspect vehicle. Deputy Freeman reports he made contact with Stoughton EMS personnel who stated the defendant did not have a medical emergency and was intoxicated. Deputy Freeman reports EMS personnel stated that the keys to the vehicle were sitting next to the defendant.

Deputy Freeman reports he made contact with the defendant and could smell a strong odor of intoxicants coming from the defendant's breath. Deputy Freeman reports he further noticed that the defendant's speech was slurred as he talked. Deputy Freeman reports he could see there was vomit all over the interior of the defendant's vehicle, and vomit all over the defendant's shirt. Deputy Freeman reports he asked the defendant how much alcohol he had to drink this evening and the defendant admitted he had consumed about eight beers.

Deputy Freeman reports the defendant admitted he was operating the suspect vehicle and had driven his vehicle to this address. Deputy Freeman reports the defendant stated he was driving from Madison to his home. Deputy Freeman reports the defendant admitted he had no idea where he was at this point.

....

Deputy Freeman reports at the McFarland Police Department, he had the defendant perform field sobriety tests. Deputy Freeman reports the defendant agreed to perform a preliminary breath test with a reported value of .16 BAC. Deputy Freeman reports the defendant stated, "I guess I'm twice over the legal limit." Deputy Freeman reports he took the defendant into custody for operating a motor vehicle while intoxicated and the defendant stated, "I'm sorry for driving. I made a stupid mistake." Deputy Freeman reports the defendant further stated, "I was just trying to get home to Stoughton." Deputy Freeman reports the defendant agreed to answer questions on the Alcohol Influence Report. Deputy Freeman reports the defendant stated, "I shouldn't have been driving. I know I was stupid."

Deputy Freeman reports at approximately 1:40 am, he made contact with the complainant identified as Jim Schoeberl, who stated that at approximately 11 pm, he and his wife were looking out their front window, waiting for his daughter and her friend to come home, when he noticed the defendant's vehicle sitting in his driveway. Deputy Freeman reports Schoeberl stated he never saw the defendant's vehicle before and walked up to the defendant's vehicle and saw the defendant was passed out in the driver's seat of the vehicle. Deputy Freeman reports that Schoeberl stated he attempted to wake the defendant and then called 911, because he believed the defendant was having a medical emergency.

¶6 Wealti moved to dismiss the complaint on the basis that it failed to set forth facts establishing probable cause to believe he was operating a motor vehicle while under the influence of an intoxicant while upon a highway or other premises held open to the public. He also moved to suppress evidence obtained as a result of his arrest on the basis that there was insufficient probable cause for the arrest. Following a hearing, the circuit court denied the motions. With regard to Wealti's contention that the complaint was insufficient, the court found that a reasonable inference could be drawn from the facts set forth in the complaint that Wealti had driven on some highway or street open to the public before coming to rest on Schoeberl's driveway sometime near the time his vehicle was observed by Schoeberl and reported to emergency personnel. With regard to Wealti's contention that probable cause did not exist for his arrest, the court found nothing in the record that "would indicate that it was unreasonable for the officer to conclude that the defendant was the driver of the vehicle" and that under the totality of the circumstances, including Freeman's observations at the scene, the field sobriety tests, and the PBT, there was sufficient probable cause for the arrest.

¶7 Following the denial of his motions, Wealti pled no contest to operating a motor vehicle while under the influence of an intoxicant, second offense. The court entered judgment accordingly. Wealti appeals.

ANALYSIS

SUFFICIENCY OF THE COMPLAINT

¶8 Whether a complaint sets forth probable cause to justify a criminal charge presents a question of law which this court reviews de novo. *State v. Reed*, 2005 WI 53, ¶11, 280 Wis. 2d 68, 695 N.W.2d 315.

¶9 To be legally sufficient, the complaint—a written statement of the essential facts constituting the charged offense—need not contain all the factual allegations that are necessary for a conviction of the offense. WIS. STAT. § 968.01(2); *Cullen v. Ceci*, 45 Wis. 2d 432, 442, 173 N.W.2d 175 (1970). It must, however, contain facts that are sufficient, in themselves or with reasonable inferences to which they give rise, to establish probable cause. *State ex rel. Evanow v. Seraphim*, 40 Wis. 2d 223, 226, 161 N.W.2d 369 (1968). The standard to which the complaint is held is one of minimal adequacy. *State v. Adams*, 152 Wis. 2d 68, 73, 447 N.W.2d 90 (Ct. App. 1989).

¶10 Wealti contends the complaint does not establish probable cause because it does not indicate *when* he was operating the motor vehicle. Wealti acknowledges that the complaint states that he admitted to having driven the vehicle. He argues, however, that absent any indication in the complaint as to when that operation occurred, it is unclear that when he operated the vehicle on a highway or street open to the public, he was doing so with a prohibited alcohol concentration.

¶11 The complaint states that Wealti admitted to having consumed about eight beers, smelled of intoxicants, had slurred speech, and was covered in vomit. The complaint further states that Wealti admitted to having driven the vehicle to the location where it was found parked, stated that he was driving from Madison to his home in Stoughton, and that, after failing his preliminary breath test, Wealti stated, “I guess I’m twice over the legal limit,” “I’m sorry for driving. I made a stupid mistake,” and “I shouldn’t have been driving. I know I was stupid.” In addition, the complaint states that Schoeberl stated that he and his wife observed Wealti’s vehicle parked in their driveway while they were waiting for their daughter to return home and when Schoeberl approached the vehicle, Wealti was passed out in the driver’s seat.

¶12 It is reasonable to infer from these statements that to arrive at Schoeberl’s residence, Wealti must have driven on a highway or other roadway open to the public’s use. In addition, given the statements in the complaint relating to Wealti’s apparent intoxication at the time of Freeman’s arrival, as well as the statements indicating that Schoeberl had been home waiting for his daughter to return when Wealti’s vehicle was observed, it is also reasonable to infer that Wealti’s consumption of numerous beers and resulting intoxication did not occur while parked in Schoeberl’s driveway, but instead coincided with his motor vehicle operation. We conclude that the complaint sets forth sufficient probable cause to believe that at the time he was operating his motor vehicle, Wealti was under the influence of an intoxicant.

PROBABLE CAUSE TO ARREST

¶13 For an arrest to be lawful, it must be based on probable cause. *State v. Secrist*, 224 Wis. 2d 201, 209, 589 N.W.2d 387 (1999). Probable cause to arrest

exists when the totality of the circumstances within the arresting officer's knowledge at the time of arrest are such that a reasonable police officer would believe that that the defendant probably committed, or was committing, a crime. *Id.* at 212. In reviewing a circuit court's determination with respect to whether probable cause existed for an arrest, we will uphold the court's factual findings unless they are clearly erroneous, but review de novo whether those facts satisfy the standard of probable cause. *County of Jefferson v. Renz*, 231 Wis. 2d 293, 316, 603 N.W.2d 541 (1999).

¶14 Wealti argues that the evidence, and any reasonable inferences that can be drawn from that evidence, fails to establish that his intoxication coincided the operation of his motor vehicle on a highway or other area open to the public, and thus Freeman lacked probable cause to arrest him. We disagree.

¶15 Freeman testified that Wealti's eyes were red, his speech was slurred, he smelled of intoxicants, he was covered in vomit, and he admitted to having consumed about eight beers. Freeman testified that Wealti admitted to having driven his car, and informed Freeman that he was on his way from Madison to Stoughton, though he was unsure where he was at that time. Freeman testified that to drive from Madison to the location where his vehicle was parked, Wealti must have driven on a roadway open to the public. Freeman also testified that he administered field sobriety tests and a preliminary breath test, all of which indicated that Wealti was intoxicated. Additionally, Freeman was aware that Schoeberl noticed Wealti's vehicle for the first time at approximately 11:00 p.m., although Schoeberl and his wife had been looking out their front window during the evening, waiting for their daughter to return home.

¶16 An officer may draw reasonable inferences from the facts in his or her possession in assessing whether probable cause exists. *See State v. Starke*, 81 Wis. 2d 399, 409, 260 N.W.2d 739 (1978). When two reasonable, but competing, inferences may be drawn, the officer is entitled to rely on the reasonable inference justifying arrest. *State ex rel. McCaffrey v. Shanks*, 124 Wis. 2d 216, 236, 369 N.W.2d 743 (Ct. App. 1985). We conclude that at the time Wealti was arrested, a reasonable officer could have inferred from these facts that Wealti's intoxication coincided with his operation of his motor vehicle, and not after his arrival at Schoeberl's residence, and that such operation occurred on a highway or roadway open to the public. Accordingly, we conclude that there was sufficient probable cause for his arrest.

CONCLUSION

¶17 For the foregoing reasons, we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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

