

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 17, 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. 2008AP2577-CR

Cir. Ct. No. 2007CT1790

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CASEY M. STAHL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
DONALD R. ZUIDMULDER, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Casey Stahl appeals a judgment of conviction for operating a motor vehicle while intoxicated, fourth offense. Stahl argues police lacked probable cause to arrest him. We affirm.

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

BACKGROUND

¶2 On October 12, 2007, deputy Zachary Holschbach responded to an automobile accident, which a passerby had reported. When Holschbach arrived, the driver was nowhere to be found, so the dispatcher called local hospitals to see if anyone had come in with injuries consistent with an automobile accident. The dispatcher located the driver, Stahl, and told Holschbach where he was being treated. When Holschbach arrived at the hospital, he spoke with Stahl's girlfriend, Megan Salentine, who told Holschbach that Stahl woke her up by banging on the door when he came home. Salentine said she believed Stahl had been involved in an automobile accident because he was covered in blood, so she promptly took him to the hospital. She estimated this was about five minutes after Stahl came home. Later that evening, however, Salentine told Holschbach she did not know how long Stahl had been home before she took him to the hospital because she did not hear him come in.

¶3 Holschbach also talked to Stahl, who admitted driving the vehicle and explained he crashed when he swerved to avoid a deer. Holschbach testified Stahl smelled strongly of intoxicants and had slurred speech and bloodshot eyes. When Holschbach asked Stahl if he had been drinking, Stahl admitted he had, but claimed to have consumed alcohol only after returning home. Holschbach testified he found this explanation suspicious because Stahl had a working cell phone with him at the time of the accident and could have called for the help he evidently needed. Holschbach therefore concluded Stahl likely left the accident because he was drunk, and informed Stahl he would be placed under arrest for operating while intoxicated. A blood draw revealed Stahl had a blood alcohol concentration of .181%.

¶4 Stahl moved to suppress all evidence obtained after his arrest, arguing he was arrested without probable cause because Holschbach had no evidence he consumed alcohol before the accident. The circuit court denied his motion, concluding Stahl's failure to remain at the scene of the accident and exhibition of intoxication, as well as Salentine's contradictory statements about when Stahl came home, established probable cause.

DISCUSSION

¶5 The only issue on appeal is whether Holschbach had probable cause to arrest Stahl. Probable cause to arrest for operating while intoxicated exists when the totality of the circumstances "within the arresting officer's knowledge at the time of the arrest [are such that] a reasonable law enforcement officer [would] believe that the defendant was operating a motor vehicle while under the influence of an intoxicant." *State v. Lange*, 2009 WI 49, ¶19, 317 Wis. 2d 383, 766 N.W.2d 551.

¶6 Stahl argues Holschbach lacked probable cause to arrest him because Holschbach had no evidence that Stahl drank before the accident, rather than after, as Stahl had claimed. We disagree.

¶7 Stahl's argument relies heavily on accepting his version of events. But it was reasonable to suspect his explanation for at least two reasons. First, Stahl told Holschbach he only consumed alcohol after returning home. His girlfriend, however, initially told Holschbach Stahl was home for only about five minutes and that Stahl did not consume alcohol in the car on the way to the hospital. Yet when Holschbach ordered a blood draw at the hospital, Stahl's blood alcohol content was well over twice the legal limit. Holschbach could reasonably doubt that Stahl drank enough in this short period of time to so drastically elevate

his blood alcohol content. He could also reasonably doubt the veracity of Salentine's later statement she was unsure how long Stahl had been home because it contradicted her initial report.

¶8 Second, Holschbach testified he was suspicious of Stahl's explanation because Stahl left the scene of the accident despite having a working cell phone. Holschbach could reasonably infer that the reason Stahl did not use his cell phone to call for help was because he had been drinking and wanted to get away. Indeed, the record indicates Stahl did not report the accident even after returning home.

¶9 Accordingly, we conclude Stahl's failure to notify law enforcement, his dubious account of when he consumed alcohol, and his advanced state of intoxication would permit a reasonable police officer to "believe that [he] was operating a motor vehicle while under the influence of an intoxicant." *See Lange*, 317 Wis. 2d 383, ¶19. Holschbach therefore had probable cause to place Stahl under arrest.

By the Court.—Judgment affirmed.

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

