

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 17, 2003

Cornelia G. Clark
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. 02-1665-CR
02-1666
02-1667
STATE OF WISCONSIN**

**Cir. Ct. Nos. 01-CT-907
01-TR-12178
01-TR-12296**

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAYNA J. BAUER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
DANIEL T. DILLON, Judge. *Affirmed.*

APPEAL from judgments of the circuit court for Rock County:
DANIEL T. DILLON, Judge. *Dismissed.*¹

¶1 DYKMAN, J.² Rayna Bauer appeals from a judgment of conviction for operating a motor vehicle while intoxicated, a violation of WIS. STAT. § 346.63(1)(a), as a second offense. Bauer claims that the trial court erred when it denied her motion to suppress evidence. We agree with the trial court that there was probable cause for Bauer's arrest. Accordingly, we affirm the judgment of conviction.

BACKGROUND

¶2 The facts are undisputed. At approximately 2:00 a.m. on September 28, 2001, Officer Joseph Baylog of the Beloit Police Department responded to a report of a hit and run accident in the parking lot of the Alumni House. Officer Bui was already on the scene and pointed out the pickup truck the victims said had struck their vehicle. The driver of the pickup had fled on foot from the scene of the accident. While Officer Bui talked with the victims, Officer Baylog ran the license plate of the pickup to determine the owner. The only description provided to Baylog was that the driver was a white female with long hair. According to the license plate check, the owner of the pickup truck was Rayna Bauer. She lived at

¹ The issue pertains to case No. 02-1665-CR. Bauer pleaded no contest to operating while intoxicated. The other charges were dismissed as part of the plea agreement. Because she is not aggrieved by the dismissals, her appeals in case Nos. 02-1666 and 02-1667 are dismissed.

² This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c)(2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

1055 Ninth Street, only four blocks from the accident. Officer Baylog went to Bauer's residence.

¶3 Upon arriving, Baylog was met at the door by Greg Wallace. Wallace told Baylog that he thought Bauer was not home. While Baylog waited at the door, Wallace searched Bauer's bedroom and returned to tell Baylog that she was not there. Baylog then asked if he could enter the residence to check for Bauer. Wallace consented and Baylog entered the house. After looking around, Baylog was satisfied that Bauer was not there. As he was about to leave, Wallace told him that he thought he heard Bauer return home. When Baylog went downstairs, he saw Bauer in a hallway

¶4 Baylog testified that Bauer appeared intoxicated, with a strong odor of intoxicants on her breath. She was having a difficult time standing up straight, was swaying back and forth, and her speech was slurred. Before Baylog had a chance to ask Bauer any questions, she blurted out, "You have got me, I did it." Baylog asked Bauer if she would return with him to the Alumni House parking lot, and she agreed. At this time Bauer also admitted that she had been driving her truck, but claimed that she could not be arrested for anything because she had exchanged information with the other party. Baylog handcuffed and arrested Bauer for hit and run because she had admitted to operating her truck and leaving the scene of an accident.

¶5 Baylog took Bauer back to the Alumni House parking lot to see if Officer Bui and the victims were still there and if they could identify Bauer as the driver who had hit their vehicle. Because no one remained at the parking lot, Baylog took Bauer to the Beloit Police Station, where he informed her that she would be given a citation for operating a motor vehicle while intoxicated. Bauer

refused Baylog's request to submit to a field sobriety test, so Baylog proceeded with the intoximeter test. Bauer's blood alcohol content was .20 percent.

¶6 Bauer moved to suppress the intoximeter test results, arguing that Officer Baylog did not have probable cause to arrest her. After hearing testimony from Baylog, the trial court denied Bauer's motion. Following Bauer's plea of no contest, the court found her guilty of OWI. The trial court dismissed related charges of operating with a prohibited alcohol concentration, hit and run, hit and run property adjacent to a highway, and failure to notify police of an accident, violations of WIS. STAT. §§ 346.63(1)(b), 346.67(1), 346.69 and 346.70(1).

DISCUSSION

¶7 Bauer challenges the finding that Baylog had probable cause to arrest her for hit and run. She argues that because she told Baylog that she had exchanged information with the driver of the vehicle she struck before leaving the Alumni House parking lot, and Baylog did not know that she had not done so, he could not have had probable cause to believe that Bauer committed the offense of hit and run. We disagree.

¶8 We will uphold the trial court's findings of fact if the findings are not clearly erroneous. *State v. Roberts*, 196 Wis. 2d 445, 452, 538 N.W.2d 825 (Ct. App. 1995). However, whether a set of facts constitutes probable cause is a question of law that we review de novo. *State v. Babbitt*, 188 Wis. 2d 349, 356, 525 N.W.2d 102 (Ct. App. 1994). A police officer has probable cause to arrest when the totality of the circumstances within the officer's knowledge at the time of the arrest 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 (1993). The threshold to establish probable cause is low; it is only necessary that the evidence “lead a reasonable police officer to believe that guilt is more than a possibility.” *State v. Richardson*, 156 Wis.2d 128, 148, 456 N.W.2d 830 (1990) (citation omitted).

¶9 Based on the totality of the circumstances at the time Baylog handcuffed Bauer, we conclude that there was probable cause for Bauer’s arrest for both hit and run and operating while intoxicated. Baylog first arrested Bauer for violating WIS. STAT. § 346.67(1), which provides in pertinent part:

Duty upon striking person or attended or occupied vehicle. (1) The operator of any vehicle involved in an accident resulting in injury to or death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the operator has fulfilled the following requirements:

(a) The operator shall give his or her name, address and the registration number of the vehicle he or she is driving to the person struck or to the operator or occupant of or person attending any vehicle collided with; and

(b) The operator shall, upon request and if available, exhibit his or her operator’s license to the person struck or to the operator or occupant of or person attending any vehicle collided with; ...

¶10 The undisputed facts establish that: (1) Baylog went to the Alumni House parking lot to investigate a hit and run accident; (2) Bauer’s pickup truck was left at the scene of the accident, and the license plate check revealed that she was the owner of the vehicle; (3) Officer Bui told Baylog that the driver of the pickup, a white female with long brown hair, had fled on foot; (4) Bauer lived only a few blocks from the Alumni House; (5) when Bauer saw the officer in her

home, she immediately confessed, “You have got me. I did it”; (6) Bauer appeared to be intoxicated as she was swaying back and forth, smelled of intoxicants, and had slurred speech; and (7) she admitted to Baylog that she had been driving her truck but claimed to have exchanged information with the accident victims.

¶11 These facts are sufficient to constitute probable cause to support Bauer’s arrest. Given the totality of the circumstances, which include Bauer’s admission, the fact that Baylog only learned her name and address after running a license plate check, and that Bui told Baylog that the driver of the pickup had fled on foot, it is entirely reasonable for Baylog to disbelieve Bauer’s claim that she had provided her name and address before leaving the Alumni House parking lot, even if he did not know for certain whether she had done so. In addition, Bauer’s evident intoxication and her acknowledged involvement in a car accident are sufficient to establish probable cause for OWI. Moreover, Bauer’s refusal to submit to the field sobriety test is further indicia of consciousness of guilt and is admissible evidence regarding probable cause. *Babbitt*, 188 Wis. 2d at 359-60.

¶12 We conclude that there was probable cause for Bauer’s arrest and therefore the trial court did not err when it denied the motion to suppress.

By the Court.—Judgment affirmed; appeals in case Nos. 02-1666 and 02-1667 dismissed.

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

Nos. 02-1665-CR
02-1666
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